The Settlement of Labor Disputes

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SPAIN: Liberia Nacional y Extranjera de E. Dossat, antes, E. Capdeville, 9 Plaza de Santa Ana, Madrid.

FREE SPEECH AND THE INJUNCTION ORDER

By Samuel Gompers,
President, American Federation of Labor, Washington, D. C.

It is upon the labor movement that the toilers and the lovers of human freedom have set their hearts and hopes. They realize that the trade union movement of America is the historically developed potential force which bears the brunt and scars of battle and which makes sacrifices for right and justice for all, for all time. There is not a wrong against which we fail to protest or seek to remedy; there is not a right to which any of our fellows are entitled which it is not our duty, mission, and work and struggle to attain. So long as there shall remain a wrong unrighted or a right denied, there will be ample work for the labor movement to do. The struggle through the ages has always been attended with brutal tyranny and cruel injustice. Some have always had to suffer that the people might obtain some modicum of freedom. The times in which we now live are no exception to that rule. They who are true to their fellows, true to themselves, cannot and dare not evade the duties and responsibilities which may come from their advocacy of the cause of the people.

Tyranny, exercised by no matter whom or from what source, must be resisted at all hazards. The labor movement which is the defender, protector, and promoter of the rights and interests of the people, must be carried forward, its rapacious, ignorant opponents to the contrary notwithstanding. We should not, and we must not, surrender the rights which we have achieved for the toilers; we dare not permit the workers to become the victims of the tender mercies of their exploiters.

The higher manhood, womanhood, and childhood, a better standard of life which we have achieved for America's toilers, the better concept of human rights and liberties which have been secured at such great sacrifices are too precious heritages even to permit them to become debatable topics. They are the result of conquests in the struggle; they are ours to maintain and perpetuate for unborn generations.

It is a great struggle, it is the struggle of the ages, a struggle

of the men of labor to throw off some of the burdens which have been heaped upon them, to abolish some of the wrongs which they have too long borne and to secure some of the rights too long denied. If men must suffer because they dare speak for the masses of our country, if men must suffer because they have raised their voices to meet the bitter antagonism of sordid greed, which would even grind the children into the dust to coin dollars, and meeting with the same bitter antagonism that we do in every effort we make before the courts, before the legislatures of our states, or before the Congress of our country, if men must urge this gradual rational development then they must bear the consequences.

In all the history of the American Federation of Labor no greater struggle has taken place than that for the preservation and the maintenance of the right of free press and free speech. This arose under the injunction proceedings in the case of the Buck's Stove and Range Company against the American Federation of Labor in December, 1907. The technicalities of the case were soon lost sight of in the battle to preserve the great principles of human liberty which were involved.

The injunction proceedings of the Buck's Stove and Range Company, of St. Louis, Mo., of which James W. Van Cleave was president, against the American Federation of Labor, resolved themselves into two separate cases; one, the original injunction issued by Justice Gould, of the Supreme Court of the District of Columbia; the other, the proceedings for contempt brought against Vice-President John Mitchell, Secretary Frank Morrison, and myself. An appeal was taken by the American Federation of Labor on both cases. For convenience and an intelligent understanding, a brief summary of the case is here given.

Owing to the refusal of the Buck's Stove and Range Company, of St. Louis, to continue the nine-hour workday to the metal polishers in its employ and its discrimination against and discharge of employees because of their membership in the union, and despite efforts to harmonize and adjust the differences existing, the labor organizations in interest of St. Louis placed the product of the Buck's Stove and Range Company upon their "We Don't Patronize" list. Application was made to the American Federation of Labor at our Minneapolis convention, 1906, to endorse the action of the workers particularly interested and place the name of the company

upon the "We Don't Patronize" list of the American Federation of Labor.

The matter was referred by the convention to the executive council for the purpose of investigation and, if possible, adjustment. The executive council entrusted the matter to Vice-President Valentine to use his best efforts in the direction indicated. At a subsequent meeting of the executive council Vice-President Valentine reported that he had gone to the limit of his opportunities, and definitely ascertained that any effort on his part or on the part of anyone else to confer with Mr. Van Cleave upon the subject would be utterly fruitless, and though some of the then employees of the Buck's Stove and Range Company, who might be affected, were members of the Iron Molders' Union of North America, of which Mr. Valentine is president, he could not conscientiously interpose any objection to the attitude of the workers and organizations aggrieved or to the full endorsement of the application of our fellow-workers to place the Buck's Stove and Range Company upon the "We Don't Patronize" list of the American Federation of Labor. Thereupon, the executive council unanimously voted to approve the application.

On December 18, 1907, Mr. Van Cleave, president of the Buck's Stove and Range Company, of St. Louis, obtained from Justice Gould, of the District of Columbia, an injunction against the American Federation of Labor, the members of the executive council, both officially and individually, the officers and members of local and international unions affiliated to the American Federation of Labor, its agents, friends, sympathizers, or counsel, forbidding them in any way to publish, print, write, verbally or orally communicate the fact that the Buck's Stove and Range Company was unfair to or had any dispute with organized labor, or that it was "boycotted" by organized labor. The injunction prohibited the publication of the company's name upon the "We Don't Patronize" list of the American Federation of Labor, directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the company, the American Federation of Labor or any of its affiliated organizations in any manner whatsoever.

Hearing was had before the temporary injunction was issued by Justice Gould. He declined later to modify it or to explain its

terms. On December 18th the court issued the temporary injunction, it becoming effective December 23d, when the Buck's Stove and Range Company filed its bond, approved by the court. The temporary injunction was made permanent March 26, 1908, by Justice Clabaugh, of the same court. It read as follows:

ORDER GRANTING INJUNCTION PENDENTE LITE

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies of the "American Federationist," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair" or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any repre-

sentation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsover impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or conjunction with them, upon the service of a copy thereof upon them or their solicitors or solicitor of record in this cause; *Provided*, The complainant shall first execute and file in this cause, with a surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

(Signed) ASHLEY M. GOULD,
Justice.

Upon the authority of the Norfolk Convention of the American Federation of Labor an appeal from the injunction was taken to the Court of Appeals of the District of Columbia, our main contention being that the terms of the injunction were in violation of fundamental constitutional rights and guarantees, and that it was, therefore, invalid and void. While this appeal was pending before the court Mr. Van Cleave petitioned the court which issued the injunction to adjudge Vice-President John Mitchell, Secretary Morrison and myself guilty of contempt of court and to require us to show cause why we should not be punished therefor.

The court heard argument of counsel on both sides as to whether the defendants, Mitchell, Morrison, and I, were guilty of contempt of court. While the appeal on the original injunction was

pending, Justice Wright, on December 23, 1908, adjudged us guilty of contempt of court and imposed a sentence of six months, nine months, and one year's imprisonment respectively upon "Morrison, Mitchell, and Gompers."

What are the offenses for which Mitchell, Morrison and I are sentenced to long terms of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by Magna Charta and clinched by the adoption of the first amendment to the Constitution of the United States. What, after all, are the grounds upon which Justice Wright held the defendants guilty of violation of the terms of the injunction? When the injunction was issued and went into effect, both temporary and permanent, we proposed to test the principles involved before the established legal tribunals. By instruction of and with authority from the executive council the name of the Buck's Stove and Range Company was removed from the "We Don't Patronize" list in the "American Federationist."

Vice-President Mitchell, it was alleged, violated the injunction by allowing certain acts to be performed by the officers of the American Federation of Labor, and also, that while presiding at a convention of the United Mine Workers of America, a resolution, regularly introduced by a delegate, calling upon the members of that organization not to bestow their patronage upon the product of the Buck's Stove and Range Company was submitted by Mr. Mitchell to the delegates for a vote. Secretary Morrison was charged substantially with having violated the terms of the injunction in so far as that he sent, or caused to be sent out copies of the printed official proceedings of the previous convention of the American Federation of Labor containing officers' and committee reports and resolutions of the convention relative to the Buck's Stove and Range Company's injunction and copies of the "American Federationist" containing similar references, circulars, appeals for funds, and editorials written by me on the injunction abuse.

The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things; because, by authority of the convention and of the executive council I sent to our fellow-workers and friends an

appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the Presidential campaign I made addresses to the people giving reasons for the vote as a citizen I was to cast at the then pending Presidential election, and because I dared editorially to discuss the fundamental principles involved, not only in the injunction pending but the entire abuse of the injunction writ. Aye, because I published in the "American Federationist" the order of the court to show cause why we should not be punished, for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty.

Immediately after Justice Wright declared us guilty of contempt of the injunction and imposed the sentences, notice of appeal was given and bonds furnished.

On March 11, 1909—that is, nearly four months after Justice Wright imposed these sentences for alleged contempt of the injunction—the Court of Appeals of the District of Columbia handed down its decision upon our appeal in the original injunction. That court greatly modified the terms of the injunction, holding that no publication could be forbidden except in furtherance of a "conspiracy" to boycott. The injunction as modified and affirmed by the court is as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in complainant's product, and from printing the complainant, its business or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against complainant's business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said "We Don't Patronize" or "Unfair" list in furtherance of any such boycott.

The costs of this appeal are equally divided between appellant and appellee. Modified and affirmed.

The court which handed down this "modified and affirmed" decision is composed of three judges, each of whom delivered an opinion. One justice who concurred in the conclusion gave different reasons. It is difficult to read Justice Van Orsdel's concurring opinion and reconcile it with his conclusion to affirm the injunction even in modified form. Chief Justice Shepard dissented from the conclusion of the court.

The Court of Appeals did not take any original testimony in the case, and I am justified in saying that the judges were somewhat in error in their estimate of the actual facts in relation to the boycott of the Buck's Stove and Range Company. This is understandable from the fact that the American Federation of Labor at no time entered a detailed defense to the allegations of the Buck's Stove and Range Company, although the charges were untrue in many important particulars. On account of the fundamental issues of free press and free speech, which were involved in the original injunction, we preferred to stand upon the *unconstitutionality of the injunction* rather than obscure this great issue by going into the details of the original trouble with the Buck's Stove and Range Company.

It was generally expected that the Court of Appeals of the District of Columbia would hand down its decision early in October, 1909. Indeed, it was to meet the issue, whatever it might be, that I was careful to be within the jurisdiction of the court when the decision would be handed down. The decision was rendered Tuesday, November 2d—that is, on Election Day throughout the country. The court stood two to one in affirming Justice Wright's decision and sentences of one year, nine months, and six months' imprisonment for "Gompers, Mitchell, and Morrison," respectively, on the ground that they had violated the terms of Justice Gould's injunction. Chief Justice Shepard dissented from the decision and opinion of the court, and declared that Justice Wright's decision and sentences should be reversed, on the ground that he issued an order entirely beyond the power vested in him, and that the order was therefore void.

Concretely stated, the decision of the court declares that no matter whether the injunction of Justice Gould was right or wrong,

valid or void, we were compelled to obey. Against that concept, at least for myself, I enter a most emphatic protest. When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision, and action, that even judges of the Court of Appeals have felt called upon to characterize his action "unwarranted" and "foolish," under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue.

It is common knowledge that a judge has issued an injunction against municipal officers enjoining them from performing their duties in the enactment of laws. Assume that a judge will so far forget himself as to issue an injunction prohibiting a legislature, or Congress itself, from enacting laws. Will it be contended that obedience must follow? Let a judge issue an injunction enjoining the President of the United States from performing the duties of his office. Does it follow that the Chief Executive of our nation must yield obedience, and perhaps thereby fail to perform the duties of his great office, to the injury of the people of the country? Were the matter involved merely material, or of such a character that time would not destroy, the situation would be vastly different. All realize that for the orderly continuance and development of civilized society, obedience to the orders of the court is necessary, and to that there would be no dissenting voice.

I say advisedly that the whole people of our country are aroused to the seriousness of the situation. They realize that this attack upon free press and free speech among the workers is only the insidious beginning of the entire withdrawal of those rights from the whole people whenever it might suit the plans of those who desire to profit by injustice and tyranny. The response of the masses of the people to the campaign of the American Federation of Labor for the preservation of constitutional rights shows how thoroughly our labor movement is in harmony with the spirit of liberty and the love of justice and right which makes a nation great. The struggle is far from ended. Eternal vigilance ever was and always will be the price of the liberties of the people. Let no one doubt my great respect for the judiciary of our country; I have confidence in their integrity, no matter what their decision, still they are human beings and as such liable to err. I say this with

respect not only to the three justices of the District Court of Appeals, but with reference to the judiciary generally.

I repeat and emphasize this fact, that the doctrine that the citizen must yield obedience to every order of the court, notwithstanding that order transcends inherent, natural, human rights guaranteed by the constitution of our country, is vicious and repugnant to liberty and human freedom, and that it is the duty, the imperative duty, to protest. The history of the human race has been full of tryanny and the denial to the people of the right of expressing freely by speech or in the press their opinions. After our people established a government they recalled that they had omitted to safeguard this vital right in framing our constitution. Therefore, the first amendment to that instrument was that guaranteeing the right of freedom of speech and press. That means something. We do not need this right to please those entrusted with the authority of government. Free press and free speech were guaranteed that men might feel free to say things that *displeased.* Demand for reform coming from the people is generally distasteful to those entrenched in power and privilege.

We must have the right to freely speak and print for the wrongs that need resistance and cause that needs assistance. There is no persecution, no injustice, to a great movement but if met in the right spirit bears its harvest of good. In this case the tremendous popular indignation at the attempt to abolish the right of free press and free speech brings our union members into closer relations and more in sympathy with each other throughout the country, and, more than that, it brings to the attention of the people as a whole the noble aspirations and the splendid achievements of the labor movement in behalf of right, justice, and humanity. Out of this attempt to seal the lips of the men of labor I believe will come good. We have come too far in the march of human progress for any set of influences to drive us back into slavery.

I see a silver lining to the clouds and a bright star of hope in the heavens, and I see ultimately the spirit of humanity, justice, and the brotherhood of man obtaining in the minds and hearts of the people of the country. Like Jefferson, I am willing to trust the people, and I have a certainty of their final triumph.

THE LAW OF THE DANBURY HATTERS' CASE

By Walter Gordon Merritt, Esq.,[1]
New York.

If called upon to select the three greatest cases in Anglo-Saxon jurisprudence affecting the so-called "labor question," employer and employed would undoubtedly agree upon the Taff-Vale decision, in England, the Buck's Stove and Range Company case, now pending in our federal courts, and the Loewe case, in which judgment was entered after trial by jury for over $232,000. The importance of any one of these cases is not diminished by any other, because of the fact that the fundamental and paramount principles involved in each are separate and independent from the main principles involved in the other two.

The Taff-Vale decision deserves distinction because it was there held that any labor union, registered under the laws of England, could be sued after the manner of a corporation. As a result of the application of this principle of law to the facts in that case, the union was mulcted in damages to the amount of £135,000 for unlawfully interfering with employees.

The Buck's Stove and Range Company case, which is still in the courts awaiting a hearing and final determination from the United States Supreme Court some time in the coming fall or winter, involves fundamental principles relating to the application of equitable remedies to protect an employer against a combination of working people; the question of the illegality of the boycott, and the right of a court of equity to summarily punish a violator of one of its decrees without a trial by jury.

It is difficult to understand how any attorney can confidently dispute the established law upon most of these questions involved in the Buck's Stove and Range Company case, because of the numerous decisions that have been rendered by courts of high standing throughout the country, condemning the secondary boycott, restraining it by injunction and punishing the violators thereof for contempt without trial by jury. It is true, nevertheless, that the United

[1]Associate counsel of the American Anti-Boycott Association, which is an organization of employers that conducted this case.

States Supreme Court has never before had presented to it a case involving the application of all of these principles to a set of facts of substantially the same character as is presented in this case. So, aside from the fact that the decision of the United States Supreme Court on many of these questions can be predicted with considerable assurance, the case, nevertheless, is one of far-reaching importance, as promising a final determination by the highest court in this land of these questions of undoubted importance. The most serious contention of the defendants is that an injunction, which restrains such communications, oral or written, as are necessary to the conduct of a boycott, violates the constitutional privilege of free press and free speech. The claim is that you cannot muzzle free speech by enjoining injurious or libelous statements uttered for the purpose of destroying property, even though an action for damages will thereafter lie on their account.

The Loewe case in contrast with the Buck's case was original in its conception and therefore more of a pioneer case. The suit was the first of its kind brought under the Federal Anti-Trust Law which declares every contract or combination in restraint of interstate trade to be unlawful and gives the party injured thereby the remedy of treble damages. The allegations and proof of the case exposed a combination of two million working men called the American Federation of Labor, which had affiliated with it over thirty thousand local unions, over five hundred city trade councils, representing the different trade unions in particular cities, about thirty state federations representing all the unions in the particular states and over 100 national trade unions such as the United Hatters of North America, representing all of the unions in a particular trade. This national federation had over 1,000 organizers active in different parts of the country in pushing the sale of union label materials and boycotting and preventing the sale of non-union materials. Among these organizers were listed the traveling agents of the United Hatters of North America who were particularly engaged in preventing the sale of non-union hats and directing the attention of the other organizers, trade organizations, city councils and state federations against such non-union hats and those who dealt in them. Since 1896, the United Hatters of North America had been an integral part of this machine and had from time to time sought the aid and co-operation of all these facilities to help

it in its systematic efforts to compel all hat manufacturers to unionize their factories. The practice of the United Hatters in dealing with hat manufacturers who did not voluntarily accept its rule was uniform and notorious by reason of a few historic fights in which individual manufacturers had successively been beaten after a year or so of resistance. The first step in the plot was the strike, and if we are to judge by the Loewe case, the employees actually involved were not consulted in advance on the theory that it concerned interests broader than theirs that their employer's factory should be union. The second step was to employ spies to watch the manufacturers' shipments, ascertain the names and locations of his customers, and then despatch special agents to each point in order to intercede with each customer. If the customer was recalcitrant, the agent enlisted all the unions in that locality to aid him in compelling that customer by loss of business and fear thereof to discontinue all relations with the manufacturer.

These activities were boastfully reported by the officers of both the American Federation of Labor and the United Hatters in their conventions and local meetings as well as by a monthly official magazine and printed convention reports which were placed at the elbow of every union hat maker to read if he so desired.

Under such circumstances and conditions nearly every defendant had been continuously a member of the United Hatters of North America and the American Federation of Labor since 1896, and during the six years which elapsed between the commencement of the Loewe suit and the actual date of trial. During this same period none of the defendants had ever made any protest against the continuance of such warfare, but had continued to pay dues and without objection had suffered or aided the re-election of the same officers.

This was the setting of the drama when the Loewe trouble started, but before any steps were taken the national officers of the United Hatters called upon Mr. Loewe and informed him in no uncertain language that if he was unwilling to be unionized by ***peaceful*** methods they would employ the *usual* methods. Following a firm declination on Mr. Loewe's part to accede to their demands, the usual steps of calling a strike and subsequently pursuing the boycott by the use of spies to discover points of shipment and of traveling delegates to intimidate dealers were ultimately taken. Upon the

evidence submitted the presiding judge instructed the jury that the plaintiffs were entitled to recover and left it to determine the amount.

The legal questions underlying the suit brought under the Federal Anti-Trust Law upon such a statement of facts resolved themselves primarily into two important principles: 1. The application of the Sherman Anti-Trust Law to a combination of working people restraining the interstate trade of an employer. 2. The liability of a member for acts of this character performed by the officers and agents of the union.

The question of the applicability of the Sherman Anti-Trust Law to this case was determined by the United States Supreme Court in 1907, when it unanimously overruled the demurrer to the complaint. The court in passing upon this complaint held that a combination of working people who combined together to restrain a man's interstate trade through the instrumentality of a strike which prevented production at home, and the instrumentality of a boycott which prevented distribution abroad, came under the prohibition of this anti-trust law. In this connection it should be noted that more than ninety-seven per cent of the plaintiff's sales were made for and shipped to customers outside of the state where manufactured so that for all substantial purposes he was engaged exclusively in interstate commerce, and the combination, in seeking to break up his business, must necessarily have had the intention to terminate that commerce.

This decision does not mean that every strike is an offense under the Sherman Anti-Trust Law, because it prevents the employer filling his interstate contracts, any more than it means that every boycott is an offense under that law. It simply means that where a strike and boycott are employed as means to prevent the transaction of interstate commerce, they become part of an illegal scheme in violation of that statute. It has been held that a combination obtaining control of a company through stock ownership and voting to prevent that company embarking in business in order that it may not become a competitor of the people who control the stock, may constitute a combination in violation of the Sherman Anti-Trust Law, but it does not follow that the ownership and control of stock, and the exercise of voting rights thereon necessarily constitutes a violation of the Sherman Anti-Trust Law any more than a

strike, which may in some instances be lawful, necessarily constitutes a violation of that law. All of these decisions are based upon the established theory that an act, otherwise lawful and innocent, may become unlawful when it is a part of an illegal scheme to accomplish an illegal purpose.

The complaint in this action was so framed that it appeared clearly therefrom that the strike and boycott were employed as a means to carry out an illegal scheme. It was alleged that the parties entered into a combination to restrain the plaintiff's interstate commerce, and, in order to carry out that illegal purpose, adopted certain enumerated means, among which were the strike and boycott. The difficult question arose, however, as to whether proof could be submitted to sustain such an allegation, for it is undoubtedly true in most instances that a strike is entered into without the information of any intention to restrain interstate commerce and with no preconceived plans to take any further steps to injure the employer's business by an interstate boycott. In such cases it would be impracticable to prove that the strike and boycott subsequently agreed upon were part of a pre-conceived plan to restrain interstate commerce. This matter of proof is the difficulty which will confront attorneys in attempting to base future suits of this kind upon the same theory.

The proof of this allegation in the Loewe case lay in the fact that before taking any of these steps, the officers of the United Hatters negotiated with Mr. Loewe and told him they had already made up their minds to follow the usual course unless Mr. Loewe was prepared to come in peacefully. It is well to read the exact conversation which took place in a little hotel bedroom on this occasion. Mr. Moffitt, the president of the union, being somewhat impatient of Mr. Loewe's reluctance finally brought the matter to a crisis and said:

"We have talked this matter over. We have endeavored to show you that it would be to your advantage to unionize your factory, and we might just as well be frank with you—we have made up our minds that this factory is to be unionized, and we hope to accomplish this in a *peaceful* way. If you don't come in that way, we shall use our *usual* methods to bring it about."

Mr. Loewe replied: "Mr. Moffitt, do you mean to say that if I am not willing to unionize the factory that you will use force?"

And Mr. Moffitt, answering, said: "Yes, Mr. Loewe, to be frank with you, we shall use force." Then, after hesitating, added: "That is, we shall create such a demand for the union label that you will be forced to adopt it."

Later, in another interview, Mr. Moffitt reminded Mr. Loewe that they had spent $23,000 to force their last victim to go union, and that he should remember the unions had never lost a case. None of these facts were controverted so that the undisputed evidence of the case showed that when Mr. Moffitt and the other officers of the union gathered together to talk to Mr. Loewe, they had in their minds at that time an agreement or plan to pursue the same methods with Mr. Loewe as they had pursued with other manufacturers, and that these methods were to first cut off all production at home by a strike, so that no goods could be furnished to fill his orders, and then to interfere with the taking of further orders through the employment of the boycott. It would be unusual more clearly to prove a case of men conspiring together to interfere with a man's interstate trade and employing the weapon of a strike and a boycott to accomplish that end. These statements by Mr. Moffitt in the presence of his associates and in advance of all steps to the effect that they had in mind the intention of pursuing these various steps to accomplish their ruinous end with a man whose business was ninety-seven per cent interstate show that both of these steps were part of a general scheme to effect the purpose prohibited by our Federal Anti-Trust Law. If the proof had shown an ordinary strike for higher wages, the situation would have been different, but this interview with Mr. Moffitt and others showed that this operation of the union was but a part of the general scheme of the American Federation of Labor and United Hatters to unionize all factories and prevent the transaction of commerce in goods not made by union factories.

The second fundamental principle involved in this case was the liability of the individual members of the union for the acts of their officers and agents. The question of the application of the Sherman Anti-Trust Law was secondary in importance to this for the repeal or amendment of that law may at any time undermine the value of this precedent on that point, while the question of the liability of a member of a union for the acts of the organization is one of as enduring importance as labor organizations themselves. While this

case surpasses all other cases of its kind in importance because of its solution of this question, it must, nevertheless, be remembered that the determination of this question depended upon the application of an ancient salutary and simple rule of law. No one questions the justice and desirability of that principle of law which says that a man must be liable for what his agents do when acting in his behalf. If you are to receive the benefit of a man's activities you must also bear the liabilities incident thereto. You cannot send a man out into the world to act for you and escape responsibility for the harm he does when so acting. The principle is applied in manifold ways to the daily occupations and relations of our people, and there is no cry, such as has been raised in this case, that it works injustice.

If I own a newspaper and employ a man to report for it, I am liable for any libel which he publishes even though he may have done it contrary to my warning and express instructions. It is true that all the warnings and cautions which an employer may give his chauffeur against reckless driving will not protect that employer against an action for injury to a child caused by his chauffeur's negligent driving. So also, if I employ a man to buy and sell merchandise for me and carefully instruct him to the effect that I wish to succeed by honorable means only, I am nevertheless responsible for any fraud he may commit while engaged in this work. These are a few illustrations of the just and unquestionable character of the rule applied in the Loewe case to the effect that every man is liable for all acts done by his agents while in pursuit of his principal's business.

Let us assume that in this Loewe case the liability of some of the defendants at least rested solely on this principle. At least some of the defendants knew nothing of the plaintiffs or their business and had never taken direct and active participation in any boycott or strike against the plaintiffs. They were selected from among that group of working people who have been thrifty and conservative enough to amass property, and it is to the shame of organized labor that these men seldom, if ever, take any active or leading part in the operations of the union. Therefore, for the purpose of discussing this question, I consider only those defendants whose connection with this conspiracy was the most remote.

It would seem at the very outset that in the absence of any

further evidence than the fact that these men belonged to a labor union whose officers are doing this work, the question of liability is clear. Are not all the acts of which we complain of the very essence of trade unionism and does not the performance of any one of them, for the benefit of the members, constitute an act within the scope of the employment of the union's officers. By its very nature, the union is a combination in restraint of trade which seeks to obtain concessions for its members through the employment of concerted action. This concerted action is ordinarily applied in the two ways that were complained of in this case. It is either through the concerted withdrawal of men from employment, or the concerted withdrawal of patronage that it seeks to accomplish its ends.

This does not mean that necessarily every union is organized for unlawful purposes, but it does mean that the general nature of their operations are of such a character that any unlawful strike or boycott carried on by its officers, in behalf of its members, even though not expressly authorized, is within the scope of the employment of the officers. If this theory is correct, it is true that any provision in the constitution of a union forbidding its officers from conducting any *unlawful* boycotting, or instituting any *unlawful* strike will be no more protection to the members in an action for damages due to such unlawful strikes or boycotts than would be the instructions of an owner to his chauffeur not to be reckless. Thus, if we assume, as has been held in some states, that peaceful picketing is lawful, the union and its members would nevertheless be liable for any unlawful act on the part of its pickets while pursuing the business of picketing, even though that picket had been expressly instructed to keep within the law.

There was much additional evidence in the Loewe case growing out of certain clauses in the union's constitutions on which the liability of individual members might be based, but it is important to dwell upon this general principle which would become applicable to all labor unions and all labor union suits rather than upon certain clauses in the constitution which may be peculiar to this particular case and which might be altered and corrected as a safeguard against a successful repetition of a similar suit. If the principle herein presented is sound, it must necessarily follow that every member of every labor union is responsible for all acts in the nature of strikes or boycotting lawful or unlawful which are carried on

by its officers and agents for the benefit of members. A walking delegate who calls a strike on a building in order to induce the employer to pay him a bribe, does an act for which the membership is not responsible because he is seeking his own personal ends and not acting in furtherance of the interests of his principals. If, however, he does the same act for the benefit of his membership, it seems to me beyond question that they are all responsible.

In the Loewe case the constitution of the United Hatters of North America of which every one of the defendants was a member, dissipated all doubts as to the liability of members for acts done to unionize factories as it expressly authorizes the officers to use all means within their power to turn all hat factories fair. It would have been immaterial if that constitution had so read that the officers were authorized to use only lawful means to turn factories "fair," for the true test is not whether they were expressly authorized to do anything unlawful, but whether the unlawful acts were done in furtherance of the purposes which they were employed to carry out and were possibly adapted to the attainment of those purposes. So when the constitution authorized these officers to use all means within their power to turn a factory "fair," they were responsible for both lawful and unlawful means employed for this purpose even as the owner of the newspaper was responsible for the unlawful libel published by this reporter. Under the constitution of the United Hatters every one of the 9,000 members of that organization was liable for all acts of the officers and agents done for the purpose of turning hat factories fair.

The constitution of the American Federation of Labor of which every defendant, in common with 2,000,000 other employees in this country, was a member, presented an equally clear case, for, according to the statement of Mr. Gompers in a petition filed in this case in the United States Supreme Court, it was admitted that the constitution of the American Federation of Labor made special provision for the prosecution of boycotts, and it was further stated that the prosecution of such a conspiracy as was set forth in this case was necessary in order that the American Federation of Labor might attain its purposes. Under this constitution providing for treatment of trade disputes and the appointment of boycott committees, every one of the 2,000,000 members of that organization was responsible for all acts of boycotting that

were carried on by Mr. Gompers and his associates and for all unfair lists and boycotting statements published in the "American Federationist." If the general principle first suggested that any act in the nature of boycotting and striking is within the scope of any labor union and is not applicable, the question was clearly settled in these two particular unions by the constitutions which bound each and every one of the members.

Another aspect of the case which still further clinches the liability of every member of these unions is the fact that the American Federation of Labor and the United Hatters of North America each held periodical conventions to which delegates were sent after a regular election in which each member was permitted to participate. The delegates to these conventions had full power and authority to bind the members as to all matters connected with their organization and the laws passed at those conventions were supreme and of the same force and effect as the constitution themselves. At each of these conventions the delegates heard and approved full reports from their officers concerning the many boycotts that had been levied throughout the country including boycotts upon different hat manufacturers, and elected the same officers. At the conventions of the United Hatters, the strike and boycotting of the Loewe concern were also considered, and all acts, strikes or boycotts were unanimously approved. Inasmuch as every delegate who attended any one of those conventions was a proxy of the individual members, any knowledge which he obtained concerning boycotting was their knowledge, and any act or vote which he exercised approving or authorizing certain boycotts was their act.

To fully understand the force of the ruling of Judge Platt when he instructed the jury that all the defendants were liable, it should also be remembered that all reasonable efforts were made by the officers of the United Hatters to fully inform the members from time to time of the various strikes and boycotts which they had instituted. Convention reports were printed and a monthly journal published for this purpose and both were made available, without charge, for all who cared to read. It was even suggested by the testimony of some of the defendants that those startling reports of the officers and agents, rather exaggerated the ruinous efficiency of their work in order to win approval for re-election

and re-appointment. The essential point, however, is that no fraud or concealment was practised by the officers behind which the membership might find justification for their claimed ignorance. The officers never doubted but that they were acting in accord with the wishes of all members.

There is to be added to all of these grounds of responsibility of the individual members a final ground which in my mind is of more moral importance than all the other grounds combined. Every defendant constantly paid dues to support the officers of the United Hatters and of the American Federation of Labor in the conduct of these boycotts and after this suit was started and all of these defendants were served with papers which informed them of the work that was being carried on by their organizations, they did not withdraw from the organization like innocent men who had suddenly learned that their organization was doing wrong, but they continued to pay dues and re-elect the same officers without a warning or protest and in these two ways continued the wrong doing of which the plaintiffs complained.

This summary omits essential facts which connected many defendants with the wrong-doing and only too briefly touches the essential points of liability applicable to every defendant. Judge Platt believed the situation presented was largely one of law and that under the law the facts conclusively sustained the liability of all. For this reason he instructed the jury that the plaintiffs were entitled to recover and left it to determine the amount. The fact that the jury brought in a verdict for nearly the full amount indicates the trend of their sympathy and supports the contention that the issue would not have been otherwise had all the questions been left to them.

The fundamental principle reaffirmed in this case is the individual responsibility of every member of a union for all acts done by its officers and agents in furtherance of its object and purposes. It says to every union man "you cannot safely continue a member of an organization of wrong doing; you must reform it or leave it." It places a responsibility upon the conservative, property-owning class to be vigilant as to the conduct of union officials. So when, directly or indirectly, a union man becomes a member of the American Federation of Labor with a constitution providing for boycotting and his dues are used to support the machinery of

boycotting, he cannot repudiate his liability for all damages caused thereby.

This principle of responsibility says to the employer who is being boycotted or otherwise wrongfully injured by the union that when the power and resources of an army of men are arrayed against him and cause him damage, commensurate with the strength of the attack, he is not limited in redress to the inadequate resources of two or three union officials who have actively conducted the wrong doing.

Any other rule of liability for union members would be hopelessly inadequate. It would penalize vigilance and reward irresponsibility. If liability for association acts can be confined to its officers by mere ignorance of their conduct on the part of the general membership, judgment-proof officers will be elected and all opportunity for the members to be acquainted with the activities of the association's officers will be withheld for corrupt and ulterior motives.

EFFECT OF THE RECENT BOYCOTT DECISIONS

By Margaret A. Schaffner,
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The immediate result of the recent boycott decisions has been a deluge of protests. Judges, unionists, and publicists have joined in a chorus of criticism as though some new doctrine had been expounded. But while the courts are undoubtedly safe in the assumption that they are following an antique line of decisions, certain vigorous dissenting opinions indicate the doubts which are beginning to afflict the judicial mind respecting the infallibility of ancient precedents. The further disapproval of the decisions by conservative men of affairs challenges consideration of the points involved in controversy and justifies the interest of the public in taking an inventory of the questions at issue.

The severest criticisms of the decisions have been offered by judges on the bench. In the case of *Gompers et al.* v. *The Buck's Stove and Range Company*, Chief Justice Shepard, of the Court of Appeals of the District of Columbia, dissented most vigorously from the majority decision of the court which affirmed the jail sentences imposed on Gompers, Morrison and Mitchell for the violation of the injunction issued by Justice Gould.[2] This sweeping injunction restrained the defendants "from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the 'American Federationist,' or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the 'We Don't Patronize,' or the 'Unfair' list of the defendants, . . . or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character

[1] *Gompers et al.* v. *Buck's Stove and Range Co.*, 1909, 33 App. D. C. 516.

[2] This injunction was issued Dec. 18, 1907, for text see: *Buck's Stove and Range Co.* v. *American Federation of Labor*, 1909, 36 Wash. L. R. 822, 833-834.

whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be 'Unfair,' . . . or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant."

Though recognizing that the defendants had obeyed the order of the court to the extent of removing the name of the complainant from the "Unfair" or "We Don't Patronize" list, the court of appeals affirmed the decree imposing jail sentence because the labor leaders had given further publicity to the boycott. In fact the very announcement of the decree of the court imposing sentence upon Gompers, Morrison and Mitchell augmented the boycott. Here was, indeed, an anomalous situation—the defendants placing themselves in further contempt of court because they gave publicity to the decree of the court against themselves. On this point the court of appeals said, "Gompers and Morrison published and circulated through the 'American Federationist' articles calling the attention of the members of the American Federation of Labor and their friends throughout the country to the injunction issued by the court below in such a manner as to cause their followers to disregard and disobey the same, the intended effect of which was to injure and interfere with complainant's business and the sale of its product, and to restrain the membership of the American Federation of Labor and the public generally from patronizing the complainant and to continue and maintain the boycott against the business of complainant."

With respect to these charges of contempt the defendants insisted that they were within their constitutional prerogatives; that freedom of speech and of the press could not be restrained by any writ of injunction; that since the writ restrained them from exercising their constitutional rights, it was wholly erroneous and void and beyond the power of any court to issue; and therefore the complaint against them should be dismissed.

In dissenting from the decision of the court of appeals which affirmed the jail sentences, Chief Justice Shepard sustained the material contentions of the defendants in vigorous and somewhat stinging language. After pointing out that the conviction was

largely based upon acts and "language used by the respondents in public meetings long antedating the commencement of the original suit, some occurring in the year 1897 and long before any controversy had arisen," the chief justice continued, "When we consider the severity of the sentence of Mitchell, I think it impossible to say that it was not founded in part upon declarations which long antedated the controversy with the complainant." In dissenting further the chief justice said, "There is another and stronger reason for my dissent so far as the respondents, Gompers and Morrison, are involved. The specific acts charged against them relate wholly to declarations and publications which violated the preliminary injunction as issued. I have heretofore expressed the opinion that so much of the injunction order was null and void, because opposed to the constitutional prohibition of any abridgment of the freedom of speech or of the press. (33 App. D. C., p. 129.)[3] Subsequent reflection has confirmed the views then expressed. I concede that the court had jurisdiction of the subject-matter of the controversy and of the parties, but I cannot agree that a decree rendered in excess of the power of the court—a power limited by express provision of the constitution—is merely erroneous and not absolutely void."[4]

The effect of this judicial criticism can scarcely be other than clarifying in the controversies still at issue between advocates of the peaceful boycott and the adherents of the injunction process in the settlement of labor disputes. Chief Justice Shepard seems to point the way for a line of decisions which may in the future distinguish clearly between lawful acts due to the incentive of self interest on the part of organized labor in conducting a peaceful boycott, and any unlawful acts which may be committed from a malicious or any other motive. Unionists insist that they are merely contending for rights ordinarily enjoyed by other men and that their right to strike and their right to dispose of their patronage as they wish are rights of which no court can lawfully deprive them. The labor leaders persistently quote the generalization in "Cooley's Torts" that "It is a part of every man's civil rights that he be left at liberty to

[3] *American Federation of Labor* v. *Buck's Stove and Range Co.*, 1909, 33 App. D. C. 83, 129.

[4] *Ex parte Lange*, 1873, 18 Wall. 163; *Ex parte Fisk*, 1885, 113 U. S. 713. *In re Snow*, 1887, 120 U. S 274; *In re Ayres*, 1887, 123 U. S. 443-485; *Re Neilson*, 1889, 131 U. S. 176-183.

refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern."[5]

To those who insist that there can be no such thing as a peaceful boycott, recent court decisions do not give uniform assent. There has been a tremendous evolution not only in public opinion but in judicial thought since the days when the boycott was defined by Judge Taft as, "A combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse through threats that unless those others do so, the many will cause similar loss to them."[6] In *Mills* v. *United States Printing Company*, the Supreme Court of New York said, "It is not in the breast of the court to stamp as illegal a combination for the betterment of the interests of the members thereof, or some of them, and which without incidental violence or intimidation, severs all business dealings with an outsider until it may secure it. If this be illegal where can we draw the line so as to countenance association to insure united, and therefore effective, action to right what seems wrong or to correct what seems an abuse, or to mark disapproval of some policy in the everyday affairs of our social life? The protest of one under threat of abstention may be unheeded, in view of the slightness of the penalty, when a like protest of many, with similar threat, is effective and only because the penalty is too great to pay. Lawful and concerted protest can regulate many things within the law without invoking paternal government. . . . It may be that the result of the boycott is a loss to him proscribed. Else the combination would fail of its purpose. But when the result sought by a boycott is to protect the members of the combination or to enhance their welfare, that loss is but the incident of the act—the means whereby the ultimate end is gained. . . . And as such a combination may be formed and held together by argument, persuasion, entreaty, or by the 'touch of nature' and may accomplish its purpose without violence or other unlawful means (*i. e.*, simply by abstention) I think it cannot be said that 'to boycott' is to offend the law."[7]

[5] *Cooley, Torts*, 3d Ed., 1906, Vol. 2, p. 587.

[6] *Toledo, Ann Arbor & North Mich. Ry. Co. et al.* v. *Penna. Co.*, 1893, 54 Fed. 730.

[7] *Mills* v. *United States Printing Co.*, 1904, 91 N. Y. Supp. 185.

This statement of the court fairly maintains the contention of the unionists that when they invoke either the strike or the boycott they are seeking to advance their own interests. They insist that modern industrial conditions not only authorize them but compel them to invoke associated effort to meet the organized strength of the employer. From the standpoint of the unionists it seems absurd that they should be enjoined from acting together in securing desirable conditions of employment in industries in which the associated owners acting through their manager—their walking delegate—determine conditions which affect thousands of workingmen.

However, the unionist does not complain of the logic of the courts, he attacks the premise upon which the argument of the court is generally made to rest, namely, that the strikers or boycotters are actuated by malicious intent. From the psychological standpoint it seems strange that the courts have so generally held that the workingmen were actuated by malice in seeking to better their conditions through associated action in a strike or boycott. To the average man, familiar with industrial conditions, it might seem as though the unionist were seeking primarily to advance his own interest in attempting to secure shorter hours, higher wages or better conditions of employment. It is generally conceded that the manager of an organized industry is seeking to promote the best interests of the stockholders or associated owners when he attempts to secure laborers at the lowest possible market price for the longest hours customary in the industries which he manages. The contention of the unionist is that the courts should likewise recognize that the laborer is seeking to better his own condition and is pursuing his own legitimate self-interest in associating with fellow laborers likewise seeking to better their industrial condition by means of a strike or a boycott. His quarrel with the court is that they have so insistently refused to recognize this motive of self-interest on the part of laborers.

That this contention of the unionists is gradually being conceded is more and more evident in recent decisions. Whether based on common or statutory law the opinions of courts are beginning to recognize that "malicious intent" may be entirely wanting in either a strike or a boycott, and that the expectation of improving their own condition may be the dominant motive which actuates the laborers in associated action.

In a decision rendered by Judge Tuley of Chicago, the right to boycott was upheld in the circuit court of Cook County as early as 1901. A certain contractor entered suit against the members of the Mosaic Workers' Union for conspiring to injure his business. The facts alleged by the plaintiff were admitted, but the construction put upon them in the complaint was denied by the defendants. They admitted sending circulars to architects, builders and contractors, setting forth that the plaintiff was the only mosaic manufacturer in Chicago who had refused to sign the agreement with the union, and that in consequence no union man would work for him. The circular further said, "we therefore request you not to let any contract to him until he has acceded to our demands. Sympathetic strikes will result on any building where he gets a contract." The question at issue was,—"Was there in these statements a wrongful attempt to injure the non-union contractor?" After summing up the evidence, Judge Tuley instructed the jury to bring in a verdict of not guilty. He declared the law bearing upon the facts to be as follows:—"The law holds that any person in competition with another may state the truth regarding the business of the other however injurious to the business of the other that truth may be. That is true of combinations and corporations as well as of individuals. The motive of making such truthful though injurious statements may be to take from the other some of his business and to add to the business of the person making those statements. The motive is a legal one. The act and the motive in this case are both legal. In other words competition is industrial welfare and injury is not the test of wrong. A man has the right to attract all the patronage he can, not only by praising his own goods, but by telling unfavorable things, provided they are true, about the goods of his rivals. He may injure them, but his method is not wrongful. The Mosaic Workers' Union simply told the truth about its relation to Davis and the consequences that would follow the letting of contracts to him. An injury may have resulted, but such an injury as the union had a legal right to inflict." Since this decision was rendered by Judge Tuley, an increasing number of decisions has from time to time upheld the legality of the boycott. In the well-known case of *Marx, etc.*, v. *Watson*,[8] the court held the boycott

[8] *Marx & Haas Jeans Clothing Co.* v. *Watson et al.* (United Garment Workers of America), 1902, 168 Mo. 133.

legal on the ground of the constitutional right of free speech. The court declared: "The fact that in exercising that freedom they thereby do plaintiff an actionable injury does not go a hair toward a diminution of their right of free speech, for the exercise of which, if resulting in such injury, the Constitution makes them expressly responsible. But such responsibility is utterly incompatible with authority in a court of equity to prevent such responsibility from occurring."

Though the tendency to admit the legality of the boycott in the United States has been more pronounced in decisions dealing with employers' associations,[9] and though the tremendous import of the Hatters' case,[10] and the Buck's Stove and Range case,[11] may for a while obscure the final issue, yet many lines of evidence indicate that this country will not be many years in following the lead of England and Germany in maintaining the legality of peaceable organized effort on the part of laborers to better their own condition. In the case of *Gray* v. *Buildings Trades Council*,[12] the supreme court of Minnesota modified an injunction by striking out the part which restrained the giving of "unfair" notices. In a recent Montana case,[13] the supreme court of that state held that a labor union would not be enjoined from boycotting a firm, since individuals have the right to withdraw patronage and advise others to do so when no unlawful means were employed. The Montana court adopted the language of the supreme court of New York,[14] in which that court said: "The verb 'to boycott' does not necessarily signify that the doers employed violence, intimidation or other unlawful coercive means, but it may be correctly used in the sense of the act of a combination in refusing to have business dealings with another until he removes or ameliorates conditions which are deemed inimical to the welfare of the members of the combination or some of them, or grants concessions which are deemed to make for that purpose." In California the legality of the boycott has been upheld

[9] *Bohn Mfg. Co.* v. *Hollis et al.*, 1893, 54 Minn. 223; *Cote* v. *Murphy et al.*, 1894, 159 Pa. St. 420; *Buchanan* v. *Barnes*, 1894, 28 Atl. 195; *Buchanan* v. *Kerr*, 1894, 159 Pa. St. 433; *Macauley* v. *Tierney*, 1895, 19 R. I. 255.

[10] *Loewe* v. *Lawlor*, 1908, 208 U. S. 274.

[11] *Gompers et al.* v. *Buck's Stove and Range Co.*, 1909, 33 App. D. C. 516.

[12] *Gray* v. *Buildings Trades Council*, 1903, 91 Minn. 171.

[13] *Lindsay* v. *Mont. Federation of Labor*, 1908, 37 Mont. 264.

[14] *Mills* v. *U. S. Printing Co.*, 1904, 99 App. Div. (N. Y.) 605.

in a number of recent cases.[15] In *Pierce* v. *Stablemen's Union*, the supreme court of that state declared: "This court recognizes no substantial distinction between the so-called primary and secondary boycott. Each rests upon the right of the union to withdraw its patronage from its employer and to induce by fair means any and all other persons to do the same, and in exercise of those means, as the unions would have the unquestioned right to withhold their patronage from a third person who continued to deal with their employer, so they have the unquestioned right to notify such third person that they will withdraw their patronage if he continues so to deal." However much the recent decisions of the supreme courts in New York, Montana and California may be opposed to the weight of federal authority, they seem to point toward the future.

A comparison of federal decisions seems to indicate that the old doctrine of conspiracy—once an infallible resource in case of labor disputes—is gradually giving way to the theory of "interference with property rights" or "interference with business." This theory seems to be flourishing both under common and under statutory law. In the Danbury Hatters' case[16] the complaint alleged that the United Hatters had effectively combined to interfere with the business of the hat manufacturers and that the interstate trade of the manufacturers was being destroyed by the boycott carried on against dealers in their products in other states. The Supreme Court of the United States held that a cause of action was stated under the Sherman Anti-Trust act and remanded the case for trial on the complaint. On February 4, 1910, after a trial lasting more than seventeen weeks, the federal circuit court rendered a verdict for $220,000 against 200 members of the United Hatters of North America, in favor of the Loewe Hat Manufacturers of Danbury, Connecticut.

The decisions in the Hatters' case and in the Buck's Stove and Range cases have stirred labor leaders to renewed protests. They point to federal court decisions authorizing the use of the blacklist on the part of employers, while in the same jurisdictions the use of the boycott is denied to the unions. Commenting on this point the "American Federationist"[17] recently said: "Mark the inconsis-

[15] *Parkinson* v. *Building Trades Council of Santa Clara*, 98 Pac. (Cal.) 1040; *Pierce* v. *Stablemen's Union*, 1909, 103 Pac. (Cal.) 324.

[16] *Loewe* v. *Lawlor*, 1908, 208 U. S. 274.

[17] "American Federationist," March, 1908, Vol. 15, No. 3.

tency of the supreme court. In the Hatters' case[18] it declares that the boycott used by the workers is a conspiracy and punishable by heavy penalties. In the Adair[19] case, brought under the Erdman act, it gives a decision which will permit employers to use the blacklist as freely as they please and the wage-workers will have no redress." In the Boyer case[20] the federal circuit court for the eastern district of Missouri, said: "An employer having discharged employees for belonging to a labor union has the right to keep a book containing their names and showing the reason for their discharge and to invite inspection thereof by other employers, even though the latter, therefore, refuse to hire the discharged employees. . . . There can be no such thing as an unlawful conspiracy to destroy a labor union by discharging its members by refusing to employ them." In the Goldfield Consolidated Mines Company Case,[21] the federal circuit court for the district of Nevada similarly declared "An agreement between mine operators that they will not employ any person who belongs to a certain labor organization or to any organization affiliating therewith does not constitute an unlawful conspiracy against such organization or its members."

Unionists point out that within a period of five years after the English decisions in *Quinn* v. *Leathem*,[22] and in the Taff Vale Railway case,[23] the British Parliament acceded to the request of British trade unions by enacting the Trades Disputes act of 1906. Under this law no action can be brought against a union for conducting either a primary or a secondary boycott. Labor leaders in America are urging congressional action which will give organized labor in this country a status as favorable as that secured in Great Britain. They moreover urge that our courts shall take the advanced ground on which the German Imperial Court in 1906 recognized the legality of the boycott in Germany.[24] They constantly assert that they are not actuated by any other motive than that shown by

[18] *Loewe* v. *Lawlor*, 1908, 208 U. S. 274.

[19] *Adair* v. *U. S.*, 1908, 208 U. S. 161.

[20] *Boyer et al.* v. *Western Union Telegraph Co.*, 1903, 124 Fed. 246.

[21] *Goldfield Consolidated Mines Co.* v. *Goldfield Miners' Union No. 220 et al.* 1908, 159 Fed. 500.

[22] *Quinn* v. *Leathem*, 85 L. T. Rep. 289 (1901), A. C. 495.

[23] *Taff Vale Ry. Co.* v. *Amalgamated Society of Railway Servants*, 85 L. T. Rep. 147 (1901), A. C. 426.

[24] "Deutsche Juristenzeitung," September 15, 1906. (Translation by Ernst Freund in the Journal of Political Economy, Nov., 1906.)

the Consumers' League and similar organizations which advertise freely that they will bestow their patronage so as "to give moral and commercial support to merchants and manufacturers who afford humane conditions of employment."[25]

Leading jurists throughout our country have recently criticized the conflicting decisions[26] relating to labor disputes and have expressed the opinion that many of our labor decisions will need to be restated in order to bring them into conformity with our fundamental law.

Since the indignation apparent in the first protests has somewhat spent itself and a calmer survey of recent decisions has become possible, several lines of results are coming clearly into view. The immediate effect upon the trade unions appeared in the call to political action. When, outgeneraled by superior forces in the forties and later in the sixties and seventies, the labor movement in America turned toward political activities, certain important gains were made in legislation. It is hardly probable that the recent tendency toward political action will be allayed before amendments

[25] "Charities and Commons," Feb. 1, 1908, advertisement of Consumers' League.

[26] For leading decisions relating to boycotting, see: *State* v. *Glidden*, 1887, 55 Conn. 76; *Old Dom. S. Co.* v. *McKenna*, 1887, 30 Fed. 48; *State* v. *Stewart*, 1887, 59 Vt. 273; *Crump* v. *Commonwealth*, 1888, 84 Va. 927; *Moore & Co.* v. *Bricklayers*, 1890, 23 Weekly L. B. (Ohio), 48; *Casey* v. *Cin. T. U. No. 3*, 1891, 45 Fed. 135; *Bohn Mfg. Co.* v. *Hollis*, 1893, 54 Minn. 223; *Toledo, Ann Arbor & N. Mich. R. Co. et al.* v. *Penna. Co.*, 1893, 54 Fed. 730; *Barr* v. *Essex Trades Council*, 1894, 53 N. J. Eq. 101; *Buchanan* v. *Barnes*, 1894, 28 Atl. 195; *Cote* v. *Murphy et al.*, 1894, 159 Pa. St. 420; *Buchanan* v. *Kerr*, 1894, 159 Pa. St. 433; *Thomas* v. *Cin. N. O. & T. P. Ry. Co.*, 1894, 62 Fed. 803; *Macaulay* v. *Tierney*, 1895, 33 Atl. 1; *Vegelahn* v. *Guntner*, 1896, 167 Mass. 92; *Oxley Stave Co.* v. *Coopers Int. U.*, 1896, 72 Fed. 695; *Hopkins et al.* v. *Oxley Stave Co.*, 1897, 83 Fed. 912; *Beck* v. *Ry. Teamsters' Protective Union*, 1898, 115 Mich. 497; *Packer* v. *Bricklayers' U. No. 1*, 1899, 21 Weekly L. B. (Ohio), 223; *Boutwell et al.* v. *Marr et al.*, 1899, 42 Atl. 607; *Nat. Pro. Ass'n* v. *Cumming*, 1900, 65 N. Y. Supp. 946; *Walsh* v. *A. of M. Plumbers*, 1902, 71 S. W. 455; *Marx & Haas Jeans Clothing Co.* v. *Watson et al.*, 1902, 67 S. W. 391; *Mills* v. *U. S. Printing Co.*, 1904, 91 N. Y. Supp. 185; *Gray* v. *Bldg. T. Council*, 1905, 91 Minn. 171; *Lucve* v. *Lawlor*, 1906, 148 Fed. 924; *Lucve* v. *Lawlor*, 1908, 208 U. S. 274; *Lindsay* v. *Montana Fed. of Labor*, 1908, 37 Mont. 264; *J. F. Parkinson Co.* v. *Santa Clara Co. Bldg. Trades Council*, 1908, 154, Cal. 581; *Pierce* v. *Stablemen's Union*, 1909, 103 Pac. 324; *Buck's Stove and Range Co.* v. *Am. Fed. of Labor et al.*, 1908, 36 Wash. L. R. 822; *American Fed. of Labor* v. *Buck's Stove and Range Co.*, 1909, 33 App. D. C. 83; *Gompers et al* v. *Buck's Stove and Range Co.*, 1909, 33 App. D. C. 516.

For leading blacklisting decisions, see: *Bacon v. Mich. C. R. Co.*, 1887, 66 Mich. 166; *Mo. Pac. R. Co.* v. *Richmond*, 1889, 73 Tex. 586; *Worthington* v. *Waring*, 1892, 157 Mass. 421; *Mo. Pac. R. Co.* v. *Behee*, 1893, 2 Tex. Civ. App. 107; *Boyer et al.* v. *Western U. Tel. Co.*, 1903, 124 Fed. 246; *Joyce* v. *G. N. Ry. Co.*, 1907, 110 N. W. (Minn.) 975; *Goldfield Consolidated Mines Co.* v. *Goldfield Miners' Union No. 220 et al.*, 1908, 159 Fed. 500.

to the Sherman Anti-Trust law are enacted and a more definite status with respect to injunctions and "conspiracy" is secured. The contention of labor leaders that freedom of speech and of the press should not be enjoined will scarcely require legislative consideration, since these rights cannot be denied in courts which hold themselves within their constitutional prerogatives. The effect of the decisions upon public opinion has been enlightening. The appeal of the American unions for rights enjoyed by organized labor in England and Germany is awakening us out of our complacent toleration of situations which have been remedied in other countries. Finally the criticism offered by members of the judiciary is calling the public mind to the incongruity of fining or imprisoning laborers for peacefully combining to advance their own interests in an industrial society in which increasing organization has been the most dominant characteristic of the age. The logic of events seems to indicate that our recapitulation of England's industrio-legal experience will not be stayed before the rights guaranteed under the British Trades Disputes act, shall have been acquired by American workingmen.

PROPER BOUNDS OF THE USE OF THE INJUNCTION IN LABOR DISPUTES

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The jurisdiction of equity to interfere by injunction to *some* extent in labor disputes cannot be seriously questioned at the present day. In issuing its restraining process in proper cases, the court exerts its authority, which is as old as the chancery itself, to prohibit those wrongful acts which will work irreparable injury to property rights for which the courts administering the common law can afford no adequate remedy. To the exercise of this power every member of the community is subject; and there is no reason why persons engaged in labor disputes should be granted immunity from it. In so far, therefore, as the courts restrain the performance by employer and workman alike of those acts only which plainly infringe upon the property rights of another person, to his immediate and irremediable damage, their action is clearly beyond the reach of legitimate criticism.

American labor leaders, however, protest with great energy against the use of the injunction to forbid acts that render the doer liable to criminal prosecution, upon the ground that since a violation of the injunction subjects the offender to punishment by fine and imprisonment for contempt of court, after a summary trial conducted by the equity judge alone, the effect is to deny him his constitutional right to be tried by a jury before he can be made to suffer criminal penalties.

This argument, in so far as it is grounded upon existing law, was finally and conclusively refuted by the Supreme Court of the United States in the celebrated Debs case (158 U. S. 564, 594), decided May 27, 1893. It was there pointed out that the power of equity to restrain the commission of acts destructive of propery had never been regarded as in any degree curtailed by the fact that these same acts might also amount to offenses against the criminal law. The injunction is solely in aid of the civil liabilty of the wrongdoer

in favor of the person directly injured; and this is not affected by the existence of a concurrent criminal liability; wherefore it follows that the power of the court to issue the injunction being thus established, the power of the same court to punish violations of it in its own peculiar fashion is the same in nature and extent as in the case of any other lawful order of the court. Since, then, the punishment for contempt is not for a violation of the criminal law, but for disobedience to a lawful mandate of the court protecting certain civil rights, there is no violation of the offender's right to a jury trial in criminal prosecutions.

The labor unions charge that this distinction is purely verbal. Its substantial effect, they say, is to subject persons to penalties identical with those imposed by the criminal courts, without the protection of a jury trial, and with a very limited right of appeal. And if the law is as stated, it ought to be changed, either by forbidding the issue of injunctions at all against criminal acts, or else—what amounts to the same thing—by allowing a jury trial to persons accused of violating such an injunction, thus rendering a proceeding for contempt practically indistinguishable from an ordinary criminal prosecution.

Assuming such a statutory change in the established law to be constitutional, we may fairly impose upon those who advocate it the burden of proving its expediency. The justice of doing this becomes all the more apparent when it is borne in mind that, whatever may be urged against the injunction, its superior efficiency in suppressing strike disorders, as compared with the less summary methods of the criminal courts, has never been denied.

An examination of the reasons commonly urged against present practice in this particular would indicate that they are based largely upon abstract grounds. The gist of the complaint is that the arbitrary and uncontrolled power of punishment at present lodged in the hands of the equity judge is oppressive and tyrannical in tendency, and consequently un-American in character. But it may be pointed out in answer, that since equity practice in contempt cases, although well known to the framers of the constitution, was permitted by them to continue unchanged, and has been in existence without objection until the present agitation was begun, it can scarcely be branded as essentially contrary to the spirit of our institutions. Moreover there is nothing in our past experience during all that period

tending to show that this power has been tyrannically exercised, nor is there any reason to believe that the courts in the future will wield it in any other than a moderate, conservative manner. Unless, therefore, it is made to appear as a fact that the power is so employed as to cause the punishment of innocent men, either for offenses which they have not committed, or else for acts for which they ought not to be punished, those who advocate the proposed change in the law can expect little support from public opinion. But they have produced no convincing proof that proceedings for contempt thus tend to increase miscarriage of justice. So far as now appears, these trials have been fairly conducted. The accused has been given every opportunity to establish his innocence; and when he has been convicted, there has been little doubt that he had done the acts charged. Since, by our very hypothesis, the acts enjoined were criminal, it cannot be said that the accused ought not in good conscience to have been punished for them, or that in being forbidden to perform them he was unduly restrained of his liberty. It fairly appears, therefore, that up to the present time the labor leaders have not succeeded in making out their case against the use of the injunction against acts of this character.

A much more serious problem is presented by the action of the courts in forbidding, under certain circumstances, the doing of acts that are not ordinarily regarded as unlawful. Modern authority in this country does not sanction an injunction against the act of striking, singly or in combination, for a good or a bad reason. It is reasonably certain, moreover, that if the strike is begun for the purpose of directly advancing the substantial economic interests of the strikers, the courts will permit them to utilize a number of peaceful measures, in addition to quitting work, to force their employer to terms. Quiet and reasonable requests, persuasion and arguments, that do not partake in any degree of intimidation, may be addressed to workmen hired in the strikers' places to induce them to join the strike. They may also establish an orderly picket system about the employer's premises for the purpose of gathering information relative to the progress of the strike and of facilitating efforts to persuade and induce the new men to quit work. In some jurisdictions, the pickets may even address similar argument and persuasion to prospective customers of the employer to induce them to cease dealing with him during the continuance of the strike. And

the union officers may not be interfered with in the performance of their duties in relation to the strike, so long as they confine themselves to measures not unlawful per se. There is considerable authority, however, for the proposition that these same acts, if not inspired by "justifiable cause," give rise to legal responsibility to the party injured thereby, and may be enjoined regardless of their intrinsic nature, upon the theory that the malicious intent to harm another may render unlawful acts otherwise innocent.

The crucial issue in the labor law of to-day centers upon the "boycott," in the widest meaning of the term. Our discussion of the subject must be understood to relate only to the procurement of business isolation by means not unlawful per se, *i. e.*, peaceable persuasion of customers, not under contract, to sever their relations with the employer, or at most the compulsion resulting from a simple refusal on the part of union men to work for or deal with such customers unless they cease to do business with the person attacked.

The tendency in the earlier cases was to apply the "justification" test to these war measures as well as to others not intrinsically illegal. But the latest judicial utterances upon the subject exhibit a growing inclination on the part of the courts to prohibit unconditionally any attempt by the labor unions to exert pressure upon their enemies through the medium of disinterested third parties. This principle that "secondary boycotts" are unlawful has been copiously discussed in the latest decisions, notably in the now famous case, "Buck's Stove and Range Co. *vs.* American Federation of Labor *et al.*," through which, by reason of the drastic character of the injunction issued by the Supreme Court of the District of Columbia and the prominence of certain labor leaders who are now under a jail sentence for violating its terms, the subject has been forcibly brought to the attention of the public.

In examining the hotly-disputed question whether or not the American courts in holding secondary boycotts illegal and enjoinable have stepped beyond the proper limits within which the use of injunctions should be confined, we find that the arguments upon which it is attempted to establish the illegality of such boycotts are reducible to two basic propositions: (1) Every man engaged in business has a legal right to a free market in which to purchase his labor and sell his product; (2) the acts of a combination of persons who, by the characteristic method of the boycott, render it difficult

or impossible for him to buy or sell in these markets violate his legal rights therein.

It may be conceded that every man has the right to a free *access* to the markets of purchase and sale, in the sense that he may not be wrongfully prevented from trafficking with such persons as are willing to negotiate with him, or from reaping such results as he may be able to gain from the negotiation. But it can hardly be contended that he has a right that persons with whom he desires to deal shall be wholly shielded from the influence apt to be exerted upon their judgments by considerations of their economic interests. If his legal rights are violated by the action of other persons in making it appear to prospective customers that their economic interests will be on the whole advanced by their dealing with some person other than the complainant, the very existence of a competitive market is rendered impossible. The right to a free market manifestly cannot extend as far as this. Something else than the damage suffered by reason of an inability to secure beneficial trade must be present in order that the law may say that the right to a free market has been infringed. A wrong is not complete unless the element of *injuria* is superadded to the *damnum*.

This element is attempted to be supplied by the second basic principle above set out. The *methods* employed in a boycott are held not only to damage the person attacked, but to infringe upon his legal rights as well. But the question immediately suggests itself as to wherein lies the infringement; and although it has exercised the courts ever since boycotts began to find their way into litigation, they have never been able to supply an answer which will stand the test of established law.

It is manifest, first of all, that there is nothing in the quality of the damage inflicted by a boycott to give it the character of a legal wrong. A stoppage of the labor supply of an establishment may lead as straight to bankruptcy as does a stoppage of the sale of finished goods, yet it is perfectly legal to strike and to persuade other persons to strike. Again, it is generally held that the conduct of a competitor in interfering with his rival's market of sale by underselling him, or by offering certain trade advantages to such customers as deal exclusively with himself, gives the rival no right of action, although it results, and is intended to result, in driving him out of the market. Neither the quantity nor the quality of the dam-

age so inflicted supplies the necessary element of *injuria*. As was said by Justice Van Orsdel, of the District of Columbia Court of Appeals, in his concurring opinion upholding the injunction issued by the court below: "It is not the injury of the complainant that measures the right of the courts to intervene, for a peaceable, lawful strike may inflict great injury, but it is the unlawful actions of the defendants directed against the rights of the complainant." (37 Wash L. Rep. 154.)

Many courts profess to find the necessary leaven of illegality in the "coercion" or "intimidation" practiced upon the complainant's customers to "compel" them to interrupt their trade relations with him. But a careful analysis of what the unions engaged in a peaceable boycott really do must reveal that their acts cannot be brought within the legal meaning of these terms. The unions simply impose conditions upon the continued bestowal of their business patronage, which they have an undoubted right to give or withhold as they will. They inform the person who has business relations with themselves and also with the person attacked, that in the future he may not deal with both parties to the dispute. He is required to choose between them. But his choice is untrammelled by any consideration other than that which influences the decision of everyone engaged in competitive business, *i. e.*, regard for his own economic welfare. He settles the question according to his determination as to whose patronage is the more valuable to him. This is "coercion" in only a figurative sense of the word. Indeed, the act of the union in placing the alternative before the customer may be equally well regarded as a promise to *reward* him for his severance of relations with the enemy by a *continuance* of their beneficial business intercourse which the unions may give to some one else if they will. It is extremely difficult, therefore, to see wherein these measures are illegal. How can civil liability spring from the act of one party in making it known to another that he will exercise his legal right not to do business with the other unless the other shall see fit to exercise his legal right to cease dealing with some third party? The unions are fairly entitled to all the benefits, direct or indirect, derivable by them from a bestowal of their patronage where they will—to deal with those whom they consider their friends rather than with those whom they regard as allied with their enemy.

The person who asks for an injunction to restrain a peaceable boycott is able to show to the court only that the defendants have put his customer into a position wherein he was obliged to decide whether he preferred their patronage to the complainant's, and that the customer, governed by economic considerations, had decided to retain the patronage of defendants, to the complainant's loss. Here is *damnum,* but where is the *injuria?* The complainant has no vested right in the mental state of another person. He cannot denounce as "intimidation" the natural regret which his customer may feel at being required to give up one line of patronage in order that he may keep another that is more valuable to him, and utilize it as a ground of action against those who made the choice necessary. Coercion by unlawful acts does give him just cause of complaint, upon the theory that illegal acts productive of damage to him are none the less wrongful as to him because they operate through the medium of third persons. But it is difficult to conceive of any theory upon which acts not unlawful as to the third party become wrongful as to the complainant merely because their operation is transmitted to him through the third person rather than directed immediately against himself.

The force of these considerations has caused the courts in some jurisdictions to seek further for the necessary taint of illegality in a boycott. Not infrequently they find it in the fact that the damage complained of has resulted from the action of a number of persons acting in concert. As a consequence there is developing a noticeable tendency upon the part of the American courts to hold that a combination of persons may not perform certain acts which each member of the combination would have a perfect right to do if acting singly, by reason of the vastly greater harm which can be inflicted by the combination.

From our present standpoint, a sufficient answer to this new principle is found in the firmly established principle of the common law, frequently reaffirmed in cases other than those arising out of labor disputes, that an act lawful in itself is not rendered unlawful by being done by a combination of persons. In other words, whatever a man has a right to do individually, he may legally do in concert with other men who possess similar rights. The contrary view would render unlawful every hostile act done by a labor union and productive of damage. Hence, in allowing concerted strikes, picket-

ing, etc., the courts in a manner estop themselves from attributing to the fact of combination any legal significance in boycott cases unless they can base a distinction upon the nature of the injury inflicted therein; and this, as has already been shown, cannot be done.

It should be noted also that this founding of liability upon the number of persons who join in the act takes no account of the damage of similar character that a single person, under present industrial conditions, might be in a position to inflict. The refusal of a single wealthy manufacturer or powerful corporation to deal with a person as long as he continues to deal with another might have an infinitely more "coercive" effect than would similar action by a local trade union. Yet, according to the principle under discussion, the damage caused by the action of the former would be *damnum absque injuria*, while that caused by the action of the latter would constitute a legal wrong.

A much more logical course is pursued by those judges who lay down broadly that no person or combination of persons may intentionally inflict damage upon another, even by methods not intrinsically unlawful, except for the purpose of securing some direct economic advantage to themselves commensurate with the injury done to the person attacked. The adoption of this principle should remove interference with peaceable boycotts inaugurated for "justifiable cause," while leaving in full operation the power to enjoin unjustifiable boycotts. There is some reason to believe, however, that even the adoption of this test would not legalize "secondary boycotts," upon the theory that the benefit expected by those engaged in it is not sufficiently direct or proportionate to the damage inflicted to constitute "justifiable cause."

The general adoption of the justification test would operate to bring the law more nearly into harmony with the moral sense of the community, and it may well be that future development will take this direction. Still, the new principle is undoubtedly at variance with the established rule of the common law, often cited and applied at the present time in other cases, that an act otherwise legal is not rendered unlawful by the existence of a bad motive in the mind of the doer.

The endeavor is sometimes made to disguise this conflict by saying that the unions have only a *qualified* right to do the inju-

rious acts complained of, and liken the case to that of slander or malicious prosecution, wherein the defendants must prove legal justification to escape liability. But there is no real analogy between the two cases. The law gives redress to every person who is injured by the utterance or publication of certain false statements about him. It affords him no redress if the statements are true. Consequently in cases of slander and libel the inquiry as to the truth of the charges is made solely for the purpose of determining which of these principles is applicable to the situation. If once it is shown that the statements were true, the defendant escapes liability although his motive in revealing the truth was in the highest degree malicious. Consequently, there is no "qualification" of rights at all. The defendant, in the absence of statutory or constitutional limitations, has the absolute right to utter or publish damaging truths, and no right at all to speak or publish damaging falsehoods.

The case of malicious prosecution is similar. The plea of justification grounded upon "probable cause" raises the issue in effect as to whether the false accusation preferred by the defendant was fraudulent or innocent. There is really no issue as to the motive inspiring the charge if the accuser had reasonable grounds for believing it to be true. The law is settled that a declaration in an action of malicious prosecution alleging merely that the defendant "wilfully, maliciously, and with intent to injure, preferred a false charge against the plaintiff," etc., but omitting an averment of want of "probable cause," will be held bad on demurrer as stating no cause of action. On the other hand, the right to bestow one's business patronage upon whomsoever he will is a right of such an absolute character that the common law supplies no warrant for an inquiry by any person into the reasons leading to its exercise.

A brief reference to a few of the difficulties in which the courts involve themselves in their endeavors to harmonize their decisions in labor cases with each other and with the established principles which they recognize in other fields, and which they insist are not departed from in labor cases, may be interesting and instructive.

In Iron Molders' Union *vs.* Allis-Chalmers Company, decided October 9, 1908, by the Federal Circuit Court of Appeals for the Seventh Circuit (166 Fed. 45), it was held that although a peace-

able "boycott" is illegal, the action of members of the defendant union employed in foundries other than the plaintiff's in notifying their employers that they would strike if the employers continued to accept patterns from the plaintiff's foundry to be made up into castings did not amount to a boycott. The only distinction sought to be drawn between this case and those in which laborers have been enjoined from refusing to work with or handle "boycotted" materials is based upon the fact that the present defendants had made no attempt "to touch appellee's dealings or relations with customers and users of its goods," but were only endeavoring to "control the supply and the conditions of the labor that is necessary to the doing of the work." This distinction, however, is of no real significance. The result of the defendants' action was to exert pressure upon third parties not interested in the dispute to "coerce" them to discontinue mutually profitable business relations with the plaintiff, so that the purpose intended, the methods employed, and the effect produced by the action of the union were subject to every objection usually urged against an ordinary boycott.

A similar instance of attenuated reasoning is presented by the Supreme Judicial Court of Massachusetts in the case of Willcutt & Sons *vs.* Driscoll, *et al.* (decided October 24, 1908, 200 Mass., 110), upholding an injunction to prevent a union from imposing a fine upon one of its members in accordance with its rules to induce him to join other members of the union in a lawful strike against their common employer. The court found the illegality of the union's action to consist in the "coercion" produced by the threat of fine, and in fact the entire course of reasoning is practically identical with that usually adduced to support injunctions in boycott cases. It distinguished the present case from Mogul Steamship Co. *vs.* MacGregor (1892), A. C. 25, in which the House of Lords upheld the action of the defendant company in charging higher transportation rates to persons who dealt with competing companies and thereby greatly injured the trade of the latter, by saying: "In that case there was simply a withdrawal of trade advantages under certain conditions." But this is all that is done in a peaceable boycott, so it would seem that this distinction, if consistently applied, would destroy the entire case against the boycott.

The state and federal courts hold legal with substantial uniformity the action of various combinations among merchants and

other employers in imposing fines upon their members, and in collectively ceasing to deal with non-members, for the purpose of maintaining certain beneficial conditions in the trade in which they are engaged. Many of these cases are irreconcilable with their decisions in boycott cases. The nature and incidents of the two classes of transactions are identical in principle, and the reasons relied on to support the holdings in each of the respective lines of cases are equally applicable to the other. A typical case is Montgomery, Ward & Co. *vs.* South Dakota Retail Merchants and Hardware Dealers' Association, decided by the Federal Circuit Court for the District of South Dakota, on February 1, 1907 (150 Fed. 413). An injunction had been asked against the action of a combination of retail merchants in refusing to deal with any jobber or wholesaler who should sell goods to a catalogue or mail-order house. The court, recognizing that "it is impossible to reconcile all the decisions bearing upon the power and authority of a court of equity to restrain by injunction combinations of persons having for their object an interference with the business of another," laid down generally that before an injunction should issue in such cases, "the court must find that the acts are unlawful. For damage arising from the commission of lawful acts, the law affords no remedy." And since the acts under review here were not unlawful, though injurious, the injunction was refused.

Finally, we cannot overlook the complaint of the labor unions that the courts with all their legal ingenuity have never been able to discover any principle whereby they can effectually protect the laborer from "blacklisting," although he may suffer greater proportionate damage therefrom than is inflicted upon an employer by even the most widespread boycott. The conclusion seems to follow, therefore, that the common law furnishes no sufficient authority to the courts for their action in issuing injunctions against secondary boycotts.

In its final analysis, however, the common law is what the courts of last resort declare it to be. It has no foundation other than that supplied by the doctrine of "stare decisis." Consequently it cannot be denied that in many states and federal circuits in this country secondary boycotts and other measures not illegal *per se*, are at the present time unlawful and enjoinable by virtue of court decisions therein. But the latter will be adopted and followed else-

where only to the extent that they are regarded as consisting with the general spirit of the law or as representing wise applications of those broad principles of justice and expediency that pervade our entire legal system. And even in the jurisdiction of its origin, a decision must ultimately measure up to the same standard, else it is likely to be so explained, distinguished and limited as to be robbed of its vitality, if not openly overruled. Consequently, we are not precluded by these "anti-boycott" cases from discussing what should be the attitude of the courts toward boycotts in the future in view of the conclusion above expressed that the decisions holding them illegal and enjoinable are not sustained by the pre-existing law.

In individualistic societies, industrial warfare seems at the present time to be inevitable, with its accompanying damage to the combatants and inconvenience to the public. Nevertheless, such conflicts should be begun only for a just and substantial *casus belli*, and the parties thereto should observe the rights of the innocent public and keep within the limits of ordinary humanity in their treatment of adversaries. In this particular the principles underlying the laws of war between nations may be profitably regarded. Now a certain amount of public sympathy is apt to be found enlisted upon the side of the person whose business is threatened with ruin by the inauguration of a boycott against him by a group of powerful labor unions. There is also in the minds of many people a belief, induced in considerable measure by past experience, that some of the men in control of these bodies cannot always be trusted to wield their authority with forbearance and wisdom. But no other than a conservative use of the vast powers of modern industrial combinations can be tolerated. Habitual abuse of such powers, to the unnecessary or inordinate damage of the public as a whole or of individual members, ought to be and will be restrained by law, without regard to the legality *per se* of the oppressive methods employed; and if existing law is inadequate, new laws should be made that will suffice.

In endeavoring to protect parties to labor disputes against injuries of whatever nature that are disproportionate to the needs of the situation, the courts voice a wise principle of public policy. It is the same policy which has received statutory expression in Wisconsin Statutes of 1898, sec. 4466-*a*, imposing imprisonment or

fine on "any two or more persons who shall combine . . . for the purpose of wilfully or maliciously injuring another in his reputation, trade, business or profession, by any means whatever," etc., and which has been held constitutional by the Supreme Court of the United States in the case of Aikens *vs.* Wisconsin (195 U. S. 194—decided November 7, 1904).

We may concede that some restriction, worked out along the line suggested by this statute, should be placed upon the aggressions of parties to the dispute. But the question as to the limits of such restrictions presents a complex problem of economics and sociology, the solution of which must be gathered from a competent and exhaustive investigation of the facts of modern industrial life and organization, and not from a process of *a priori* reasoning professedly based upon common law principles developed under conditions far different from the present. An investigation of this character cannot be made by the courts in passing upon specific cases. It is a task for legislative commissions of qualified experts who can proceed unhampered by many of the obstacles that retard the course of judicial proceedings. The reports of these commissions should serve as the basis of carefully drawn statutes, such as may be reasonably expected to settle the matter upon some definite foundation. In the meantime, the judges should content themselves with applying the existing law, or at most extending it to cover only cases about which there can be no reasonable difference of opinion.

The present attitude of the American courts toward labor disputes tends to breed evils as serious as those which they are endeavoring to remedy. They announce that labor cases, like all others, must be decided according to law, not expediency, and the argument of counsel is largely confined to the discussion of legal, not economic, principles. Yet when the decisions are rendered it is too often apparent that the courts have in reality disregarded established legal principles in order to register pre-determined economic views based upon only a rudimentary knowledge of the situation. This fact cannot be disguised by the elaborate but palpably unconvincing reasoning upon which the decisions are professedly grounded. It is revealed very clearly by the conflicting decisions and especially the vigorous dissenting opinions that so abound in the field of labor law. The result is to engender in the minds of the laboring classes

a deep sense of injustice; a growing conviction that even the law of the land cannot overcome the bias of the courts in favor of the employing class. The consequent impairment of the workman's respect for and confidence in the courts is not to be lightly regarded. Its fruits are seen in the appearance of the anti-injunction bills, and demands that all judges shall be chosen by popular election and for short terms; upon the not unreasonable ground that if, instead of applying the law, the judges are also to make sweeping changes of questionable value in its content, the people should be in a position to exert due influence upon the process.

In the future, therefore, the courts will act the wise part if they interfere by injunction in labor disputes to restrain the doing of acts only that are plainly wrongful according to existing law. Requests for action that would involve unauthorized extensions of their power to prohibit should be refused, with the answer that the law does not warrant judicial interference with the acts complained of, and that changes of such radical character must be made by the legislative branch of the government.

COMPULSORY ARBITRATION IN THE UNITED STATES

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In this age of organization, with gigantic combinations of capital on one hand and powerful associations of labor on the other, the attainment of industrial peace is an ideal deserving and commanding the best thought of the time. The study of industrial problems is being forced more and more on statesmen and educators, leaders of public thought and molders of public opinion. At the outset let me say, that in my opinion, there is no royal road to industrial peace, unless we discover a method to change human nature. In spite of any laws which we may enact, or any machinery we may devise to aid in the settlement of industrial disputes, we still shall have some strikes. That perhaps is well, for while we may deplore strikes and bitter conflicts between employer and employees, the absolute prohibition of such conflicts would, in my judgment, create a condition of serfdom and oppression more dangerous to society than our present industrial disturbances.

Efforts to deal with these industrial conflicts by legislation began upwards of a century ago. The original attempts were primitive in character, suited to conditions existing at the time, but they embodied some of the ideas in effect to-day and aimed to protect the worker from economic injustice. As labor organizations grew in strength and influence, multiplying the number of strikes and lockouts, so did the machinery for dealing with them develop, until to-day we have arbitration and conciliation laws in almost every country and in almost every state in the United States. These laws differ in scope and vary in degree of effectiveness, but all aim at the same goal, the harmonizing of the interests of employers and employees, so that the third party, known as the public, may be injured or inconvenienced as little as possible.

The particular law with which I have chiefly to deal here is the law of "Compulsory Arbitration." I shall endeavor to point out some of the advantages and disadvantages of compulsory arbitra-

tion and, so far as I am able, show whether it would be effective in preventing strikes and lockouts in the United States.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, the Parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word and the eyes of other countries turned toward the antipodes to watch the results of its experiment in dealing with its industrial problem. Other countries of Australasia took up the consideration of the problem and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and in West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law assert that the country has greatly prospered, which undoubtedly is true. The fact should not be overlooked, however, that since the passage of the laws in the countries affected, there has been a steady upward tendency in prices, and wages and strikes are uncommon on a rising market in any country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what laws may be on the statute books.

If we look at compulsory arbitration laws as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in those countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties provided in the laws has been found difficult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid a strike or lockout, liable to a year's imprisonment. Reduced to its final analysis that must be the ultimate end of any compulsory arbitration law—work on the conditions prescribed or go to jail. It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory and an employer can not accept it and remain in business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared they would import shoes from Europe and America, rather than attempt to operate their factories and pay the wages set by the Arbitration Court.

In spite of its experiences, however, Australasia does not want to repeal its arbitration laws. The New South Wales law was passed in 1901 for a period of seven years and in 1908 it was reenacted at the end of the experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

There is one point in consideration with the Australasian laws which I regard as rather significant. The last report for Western Australia for the year ending June 30, 1909, shows that joint trade agreements are taking the place of awards of arbitration courts. These contracts are termed "Industrial Agreements" and are enforceable by the Court of Arbitration. They are entered into voluntarily by employers and employees as are joint trade agreements in this country. Mr. Edgar T. Owen, Registrar of Friendly Societies, in his report dated August 14, 1909, says: "It will be observed that the unions which have made industrial agreements in lieu of awards of the court for settlement of their disputes contain 7,524 out of a total membership of all unions of 15,596."

The point I desire to emphasize is that in West Australia, as

shown by the report referred to, workingmen and employers are making their own agreements instead of having the Arbitration Court make them. The same report shows that while there were 168 disputes referred to the Arbitration Court from 1901 to 1904, there were three disputes referred to it in 1907 and twelve disputes in 1908. That certainly does not seem to argue for the popularity of the Arbitration Court, and taken in conjunction with the increase in the number of industrial agreements, indicates clearly to my mind that employers and workingmen in West Australia are turning to the joint trade agreement as the better method of adjusting differences.

As has been stated, the New Zealand law was enacted at a time when the public was exasperated as the result of a series of prolonged strikes. It was not favored by either employers or employees. For a time neither side took advantage of the law, until a union which was worsted in a strike, decided to register so that it might have an additional weapon in the event of another dispute. When the next dispute did arise, the employers ignored the court and an award was returned against them. The award was enforced by fines and eventually employers began to realize that the new law was not to be trifled with or ignored.

In New Zealand trade unions are made the basis for compulsory arbitration. The workmen must belong to a duly registered union before they can appeal to the court. That presents rather an anomaly, compelling workmen to organize and then depriving them of the right to exercise the function of organization by quitting work collectively if they are dissatisfied with their conditions. I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law it is easily enforceable and probably will accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration

laws would not be in violation of the Constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our own country. The conditions in the United States and Australasia are as different as the countries are widely separated. In Australasia the tendency is toward state control in everything. Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United States the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference with what we regard as our private affairs. It is not the question whether we are right in the position or not, it is the fact that we must reckon with.

The experience of Australasia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the so-called "Socialist Resolutions" in the convention of our own American Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain conditions means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate states the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult if not impossible. The federal government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes are directed against public utility corporations, therefore such laws, should they be constitutional and enforceable, would not prevent strikes except in a limited degree.

I have already referred to the importance of having public sentiment on the side of any law to make it effective, and nowhere

is the truth of this more observable than in the arbitration and conciliation laws on the statute books of a large number of our states. We have in Illinois a very good law dealing with industrial disputes. To the extent that the arbitration board can compel the attendance of witnesses and the production of books in a strike which inconveniences the public, it is compulsory and probably goes as far in that direction as it is advisable to go at the present time.

While the Illinois law has been the means of averting many strikes and of adjusting others, our activities under the law have been limited by reason of the fact that many times neither party to a dispute likes the idea of outside interference. The machinery is there, but in a majority of cases neither side will invoke its aid, and it is doubtful to my mind whether they could be forced to do so. They must be educated and led rather than driven.

The compulsory feature of the Illinois law is contained in the following clause:

> Whenever there shall exist a strike or lockout wherein, in the opinion of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel or light, or the means of communication or transportation, or in any other respect, and neither party to such strike or lockout shall consent to submit the matter or matters in controversy to the State Board of Arbitration in conformity with this act, then the said board after having made due effort to effect a settlement thereof by conciliatory means and such effort having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and make public its findings, with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout; and in the prosecution of such inquiry the board shall have the power to issue subpœnas and compel attendance and testimony of witnesses as in other cases.

The section of the law quoted has been in effect since 1901, but has not been put to a test. It is based on the theory that public opinion is the final arbiter in disputes of a public or quasi-public character, and I believe that the theory is correct. Few strikes of a character that would inconvenience the public in the meaning of the law have occurred in Illinois since 1901. In 1903 we had a strike of street car employees in Chicago that doubtless came under the provisions of the law and the members of the board made efforts to

settle the strike, but without success, as the company refused to co-operate. The board took the question of an investigation under consideration, but as the city council and other agencies were at work trying to bring about a settlement, which was the question of first importance, the investigation was not started because it might have tended to hinder a settlement and certainly could not have been completed in time to be of much use. The strike lasted about two weeks. In a coal strike in 1906 the board offered its services in a mediatory capacity, but the dispute was of such a nature that no agency would have been effective, as both sides simply agreed to fight it out and get together when they had enough of it. The strike had been anticipated for months and there was a sufficient supply of coal on hand to insure against any inconvenience to the public. In fact, neither the coal operators nor the miners regarded the dispute as a strike or a lockout, but preferred to term it a "suspension."

While I have said that the Illinois law goes as far in the direction of compulsory investigation as may appear advisable, I believe it could be improved upon in one particular. Instead of providing for an investigation after a strike or lockout has occurred and after the public has been injured, the investigation should be after such strike or lockout has been threatened and there appears no possibility of its being averted without some outside intervention.

The aim of all state boards of conciliation and arbitration is to prevent rather than to settle strikes, and though I am convinced that compulsory arbitration is neither practicable nor advisable in the United States under existing conditions, I believe that compulsory investigation would be desirable in all disputes between public utility corporations and their employees.

It is the hasty, ill-advised strike that causes most of our troubles and at least half of them could be averted if both sides were required to submit to an impartial investigation and give full publicity as to the merits of the controversy. After such investigation, the public which is discriminating in such matters where the facts are known would soon end a strike were one to take place. It is doubtful if any corporation or labor union would have the hardihood to fly in the face of an educated, enlightened public opinion and for that reason I believe publicity is the strongest weapon that can be used for the maintenance of industrial peace.

The experience of Canada with its "Industrial Disputes Investigation Act," of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law, were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present-day conditions. The Canadian law was enacted on the recommendation of the deputy minister of labor following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for that particular case and the result of its findings made public, the employer or the union is free to engage in a strike or lockout if desired. Of course the board does everything possible to effect an amicable settlement as well as conduct an investigation and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes, it furnishes an easy and sensible method for adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law, compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to forego any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake it is more difficult. Even then, though it is impossible to arbitrate or compromise on a

question regarded by either side as a fundamental principle, it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may have been viewed by one side or the other. For that reason the Canadian law of compulsory investigation previous to a declaration of war in industries affecting public utilities, seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australasia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my exeprience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award, they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between employer and employee, so that the number of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration it is the antithesis of compulsion.

In conclusion let me say that, though we realize that in many strikes the innocent third party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than fly to others we know not of" in the shape of compulsory arbitration.

NECESSITY OF INDUSTRIAL ARBITRATION

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We must leave it to demagogues or to pre-election politicians to deliver themselves of fulsome panegyrics on the dignity of labor, and on the blessings conferred upon society by the laboring man. It would be wasting time to dwell upon what is one of the best known and best appreciated truths of human knowledge. More than waste of time it would be to show how capital and labor are but as the two blades of a pair of scissors, each useless without the other—facts so well known and so profoundly appreciated by people of intelligence, that, to speak of them were to insult the reader's intelligence.

An equal waste of time it would be to enter upon a discussion on the benefits of capital to civilized society, and on the necessity of its protection, for every railroad that traverses our continent, every ship that plows the deep, every factory and mill, every forge and furnace, every university and library, every school and art gallery, every invention that lessens the hardship of labor, and every comfort that heightens the joy of life, speak of the blessings of capital with a wisdom and an eloquence, such as even the most learned writer on economics or the most eloquent orator cannot reach. Starting, therefore, with these axiomatic truths of economics as our basis, it is to be hoped that, if anything be said in the development of this article which may seem harsh to either capital or labor, it is not to be charged to prejudice or ignorance.

That something is to be said must be evident even to the superficial observer. There exists a state of war between capital and labor. There is bitter conflict in some quarters; there is menacing hostility in others. Employer and employee stand arrayed against each other with gauntleted hands. Strong leagues are compacted; open and secret alliances are formed. Campaigns are being carried on in trade-papers and on platforms; bitter incriminations and recriminations are published in lurid type. Pictorial art is resorted to to inflame the mind. Capital is represented as a Moloch, grow-

ing fat on the heart's blood of the poor; and labor is shown as an anarchist whose sole aim is the crushing of the labor-giver. The two, who in the economic household are as closely bound together as are husband and wife in domestic life, and who should live peacefully side by side, promoting each others good and furthering the highest ends of society, are engaged in a bitter struggle.

The cause of the contention between the two is largely *Trade-Unionism*. Each believes that it has right on its side, and, listening to the story of each, the uninformed is at a loss to tell why there should be the slightest contention between the two. Turn to Mr. John Mitchell's book entitled "Organized Labor," and you read: "Labor unions are for the workman, but against no one. They are not hostile to employers, not inimical to the interests of the great public. . . . There is no necessary hostility between labor and capital. Neither can do without the other. . . . The interest of the one is the interest of the other, and the prosperity of the one is the prosperity of the other. . . . Trades-unionism has justified its existence by good works and high purposes. At one time viewed with suspicion by workman and employer alike, it has gained the affections of the one and the enlightened esteem of the other. . . . It has improved the relations between the employer and employed. . . . The labor union is a great, beneficent, democratic institution, not all-good, not all-wise, not all-powerful, but with the generous virtues and enthusiastic faults of youth. . . . The trade agreement makes for peace in the industrial world."

Turn to the book entitled "Some Ethical Phases of the Labor Question," by Carroll D. Wright, late United States Commissioner of Labor, and after reading of the miseries and hardships of labor, prior to the introduction of the modern factory system, made possible by capital, you hear his verdict: "Better morals, better sanitary conditions, better health, better wages—these are the practical results of the factory system as compared with that which preceded it." You inquire of the heads of large industrial establishments, and they tell you of the well-equipped sanitary shops and factories and mills, of the many provisions that have been made to lessen the drudgery of toil by means of labor-saving machinery, of the comforts that have been introduced, such as lunch-rooms, wash-rooms, reading-rooms, and the like; of the improved dwellings that are furnished

to employees, and of the opportunity that is afforded them for mental, moral and spiritual culture. You question some recently arrived laborers, and they tell you of the starvation wages they received in the old world, of the starvation food on which they subsisted, of the long hours of labor that were required of them, of the miserable homes in which they lived, of the hard labor that was exacted of their wives, even of their children, to enable their families to eke out an existence.

After listening to such highly-colored accounts of the attitude of the employer and employee toward each other, what could be more natural than to conclude that the most harmonious relationship exists between the two? But we have heard also the other story. We know that employers deny the professions of peacefulness made by the trade-unions, and employees declare that they see no sign of the good-will pretended by the employers, that they pay in toil twice and thrice for whatever little they get. The one side claims that trade-unionism has but the enslavement and ruination of capital for its goal, or, at best, that its object is, as President Eliot, of Harvard University, expressed it, "to work as few hours as possible, to produce as little as possible during that time, and to receive as much as possible for the service given."

A Damoclean sword, says the labor-giver, hangs suspended over him on the slenderest kind of thread, ready to drop upon him at the merest word or beck of labor-leaders. He can never tell when his industry may be brought to a standstill or crippled. His laborers' contract with him may be never so binding, his treatment of them may be never so considerate, let the labor leader command his men to strike out of sympathy with strikers in some other establishment or industry, and out they step, utterly unmindful of the binding nature of their contract, and of the considerate treatment they have received.

Scarcely is one fight over when another is begun. Mr. Brooks, author of "The Social Unrest," relates that after the recent strikes in the hard coal regions, an employer said to him, "I have been in this business more than twenty-five years, and it seems to me that I have been in the strike business rather than in the coal business." Within the past twenty-five years there have been more than three thousand strikes in the coal industry alone. Mr. Brooks also tells that after the miners had won their strike of 1900, some of the

companies began to put stockades about their breakers. Upon his asking why they did this, seeing that it was a time of peace, one of them replied, "Oh, we shall soon enough have another fight, and we propose to be ready for it. To make concessions to a trade-union means a fight at the end."

This seems to be the opinion of employers in general. There is no living in peace, says an employer, with labor agitators. There is no tyranny like unto theirs. A non-union man, has, in their eyes, no more right to life and liberty and protection than if he were the worst of criminals. It is widely claimed that these labor agitators look far more to their own interests than to those of the laboring man. To hold on to their lucrative positions, they feel, it is claimed, that they must make a show at doing things, and their only way of doing things is to create trouble between employer and employee. Now the hours are too long, now the wages are too small. Now the number of men employed is too little, now the machinery in use is too much. Now the efficient non-union man employed must be dismissed, now the inefficient union man must be retained. They little care whether or not they kill the goose that lays the golden egg. They little consider the poor laboring man upon whom a long-enduring strike bears the hardest. They little care whether by closing to the laborer the doors of industry, they open wide to him the doors of want and misery.

It is bad enough, employers say, that labor leaders should know of no other way for reconciling difficulties between employers and their men than by a strike. But to call out from other shops the men who have no grievances, who are under contract, who are satisfied with wages and hours and treatment, to call these out for no other reason than to use them as a sort of a thumb-screw on the employer in whose place the strike has occurred, is an outrage beyond endurance. It places the reins of industrial authority entirely in the hands of the labor leader. It places the owner of the establishment in the attitude of a dependent on the good will of a dictator. Employers ask themselves: what if they were to do as they are done by, by their employees? What, if notwithstanding contracts, they were to shut out their men because of sympathy with that fellow employer in whose establishment a strike has occurred? What an outcry the laboring people would raise!

The injustice against which they would cry out, and justly, would be precisely the same which they themselves constantly commit.

Little wonder that employers should be disheartened or bitterly incensed, or that they should refuse to confer with people who behave like highwaymen. Little wonder that they should refuse to enter into contracts with people to whom a contract is of no more value than the paper it is written on. Little wonder that employers should become indifferent to the lot of their employees, when for all the pains they have taken, and all the means they have expended to provide them with comforts so as to make labor agreeable, and environment pleasant, they have but base ingratitude for their reward. Little wonder that in the gigantic shops which Carnegie built up, and in which he at one time welcomed the Union as "beneficial both to labor and capital," there should be a feeling to-day against the Union so pronounced, as to lead one of the strongest men of the company to declare, that they would use every resource within their reach rather than have a trace of unionism in their shop.

Sad as are the plaints of the employers those of the employees are sadder still. They admit that their measures are frequently harsh, but, they claim, there are no others at their command to enforce their rights. When weakness fights against strength, poverty against wealth, the ends sought must be considered, they say, and not the means employed. It is a fight for existence and not for sport. It is a fight for their wives and children, for food to still their hunger, for clothes with which to cover their nakedness, for the ordinary comforts with which to make existence tolerable. That they themselves may not be crushed, they must crush the power arrayed against them. They must meet force with force, they say, tyranny with tyranny. Labor, being their only commodity, and capital desiring to amass by means of it yet greater wealth, they must place the highest possible value upon it. Capital, they claim, is the enemy of society. It corrupts the law and uses it for the oppression of the poor. But for the laboring man's combination with his fellow laboring man, his lot, they claim, would still be that of the slave or serf, his wages would still be a mere pittance, his hours of labor twice as long as now, his home a hovel, his clothes rags, his degradation as base as in the days now happily past. It is only by uniting all the laboring men, by making the interest of one the interest of

all, that they hope to cope successfully with the mighty power of capital, and obtain the rights and the rewards that belong to labor. Having these noble ends in view, they claim they have a perfect right, in mere self-protection, to coerce the non-union man into the union, and to brand as a "scab" him who is so blind or base as not to see that his own best good lies in strengthening the hand of his fellow sufferers.

Being part creators of wealth, they are tired, they say, of seeing all the good things of life going to the rich and all the undesirable things to them. It is galling to them to know that one per cent of the population of the United States owns more wealth than the remaining ninety-nine per cent, and that the laboring people, who constitute eighty-eight per cent of the population, own but thirteen per cent of its wealth. It is galling for them to read and hear of the extravagances going on in society, and to feel that it is their labor which is paying for it all, while they themselves are often lacking the necessities of life.

They admit that their wages are higher than they ever were before, and their hours shorter and their homes better, but, they claim, their demands are higher, and that the means of existence are far more expensive than they were. With all their higher wages, they ask, what is the lot of most of the laboring men but misery? The slums and crowded tenement districts are the homes of most of the laboring people. If wages are fair the number of working days in the year are short. On an average, about half of the year, they claim, is spent by the working people in enforced idleness. Life for most of them is a hand-to-mouth existence. Only few of them can lay by anything for old age. The casualities they meet with are many; the death rate is large; disease is frequent. If sick for any length of time, the charities must help them out. If old and feeble they must seek refuge in the almshouse. Money trusts and operators' combines, they say, exist solely for the purpose of crushing every labor union and of stamping out every right and liberty of the laboring man.

If the latter claim be the aim of employers, they will never succeed. The progress of evolution is forward and upward. The slave rose into the serf, the serf into the free man, and no trust and no combine, nor all of the trusts combined will ever suc-

ceed in degrading the American laboring man back again into slavery, or even into serfdom. The recognition of his rights has been purchased at too dear a price to be surrendered without a bitter struggle.

There is certainly no gainsaying that laboring men have a legal and moral right to organize unions for self-protection and self-improvement. There was a time when master and man worked side by side at the loom, or at the shoemaker's bench, or in the wagon shop, and when the employee had no difficulty to reach the ear of the employer, for the righting of wrongs, for the lessening of hours or for the increase of wages. But, modern expansion of industries has created new conditions and presents new problems. The individual is lost in the corporation; the owner is replaced by foremen, bosses, managers, superintendents, directors.

Capital deals in representative capacity, and labor is obliged to do the same. It must have its representatives to protect its rights. It is with the same end in view that we organize government. Individuals combine and select a councilman to represent them in municipal government; a legislator in state government, a congressman in national government. Union and representation are American principles; they are the very foundation of our liberties, and must have sacred recognition by every freedom-loving American.

Next to the right of representative union, laboring men are entitled to an adequate share of the profits of labor. It is certainly unjust that the lion's share should fall to capital, while labor, the equal producer of it, should be obliged to content itself with the pickings; that the one, from the profits of capital, should be enabled to riot in luxury and to revel in extravagance, while the other, from the product of labor, should be barely able to keep body and soul together. Next to the right to adequate wages, the laborer has a right to reasonable hours of work. It is wrong to place human flesh in competition with steam and machinery. If modern industrial life cannot leave to the laborer the privilege of breaking off his day's task whenever he chooses, the laborer, in return, must be guaranteed no longer hours of toil than is consistent with the needs of health, with the obligations toward his family, with the duties he owes to his self-government.

Moreover, the laborer has rights to be protected against being "blacklisted," when exercising his inalienable privilege of selling

his labor to whomsoever he chooses. When seeking employment, he has the right not to be discriminated against for being a member of a trades-union. He has the right of uniting with his fellow laborers in peacefully quitting work, if his demand for higher wages or lesser hours, or his request for righting certain real or imaginary wrongs be not complied with.

All these rights the laborer has, and all these rights every loyal American and lover of humanity sacredly honors. But when the trades-union passes beyond these rights, and invades the territory of the employer, when it arrogates to itself the right to run the employer's business, the right to dictate to the employer, how much wages he may and may not pay, from whom he may and may not buy, and to whom he may and may not sell, how many hours he may and may not work, how many machines he may run, and at what speed, how many apprentices he may and may not employ, when it undertakes to cripple the employer's industry by calling out his men, because of sympathy with other strikers, or because of his employing non-union men, by boycotting his wares, by sending out its pickets to waylay non-union men, and to force them by intimidation or violence either to leave work or to join the union, it is then that the trades-union becomes an organized tyranny, and the union man a despot. It is then that a state of war exists between employer and employee, and that, in retaliation, capital resorts to drastic measures that are no less reprehensible.

I will grant that it is irritating to see men ready to take the place vacated because of insufficient pay, or because of too many hours of work, or because of some other grievance, and I can see every reason why such people should be peaceably reasoned with, and, if possible, made to join the union. But to set upon such men, when argument fails, to assail them, to endanger their lives, to persecute their families and those that have relations with them, yea, even to burn or dynamite their homes, or to club or shoot them to death—and not only them but officers of the law, delegated by the city or the state to protect them, in the lawful discharge of their rights—such procedure is a degree of lawlessness nothing short of anarchy, and demands the most condign penalty of the law.

It is lawlessness when a trade-union regards itself above the authority of the law of the land, and makes rules and regulations in contravention thereof. It is lawlessness, when a trades-union

constitutes itself a governing agency, and claims authority to control those who have refused to join its ranks and to consent to its government, and to deny to them the personal liberties, which are guaranteed to every citizen by the constitution and the laws of the land. It was Abraham Lincoln who said "No man is good enough to govern another man without that other's consent." It is lawlessness to bring privations and suffering upon an unoffending community because of a want of commodity which non-union men are ready to furnish, but which union men will not permit under the threat of violence.

It is lawlessness to boycott the produce of a manufacturer, who has incurred the ill-will of a trades-union, and to extend the *anathema* to every trader who handles such boycotted goods, even to consumers who purchase them. It is not an inapt comparison to liken the boycott to the ecclesiastical ban. As there was no more cruel weapon during the Dark and Middle Ages than the ban to bring refractory individuals to the feet of the church, so does the modern industrial world, know of no more cruel weapon than the boycott, used by the trades-union, to bring under its yoke employers who persist in the belief that they have a right to manage their own affairs.

The cry of the people who are not direct participants in the controversy is as loud as is that of employer and employee. Though in no way responsible for the bitter feelings existing between the contending parties, they are made to suffer a large part of the consequences. If the strike ties up or cripples a public utility, the people are put to no end of inconvenience and alarm and loss. Lives of innocents are slaughtered. Properties are dynamited. The peace of the community is demoralized. The usual routine of life is broken up. The public places of instruction and amusement are closed. People in poor health collapse under the nervous tension of constant fear and fright.

Recognizing right in the contentions of employers and employees, the people believe that a way out of the difficulty ought to be found, must be found, for the sake of the general peace and good will. As government has provided courts for settling other quarrels between man and man, so must it provide courts for arbitrating differences that are arising in increasing numbers, and that

are bound to arise in larger numbers, owing to the growing discontent among laboring people, and owing to the constant inflow of immigrants, who, being in need of employment, are bound to compete in the open market for the labor to be had. More and more the people feel that, as they have the right to call in the police when disturbances of the peace are annoying or endangering the neighborhood, or when they wish to have a nuisance abated in their immediate environment, so have they the right, in self-protection, and for the sake of the public peace, to demand that special courts be permanently established for the arbitration of industrial quarrels.

In that call for arbitrating our industrial conditions lies our hope for the future. It is a new cry and a far different one from that which follows reports of bullets and explosions of dynamite. It is this far-spreading demand for arbitration that gives a silver lining to the dark cloud that now lowers over us. That cry has already been answered in Germany, in Canada, in Australia, in New Zealand. Wherever answered, it has tempered much bitterness. The establishment of more than four hundred permanent courts of arbitration for trade disputes in Germany has lessened the number of strikes in that country to an astounding degree. Seventy per cent of the disputes in Germany between employer and employees have been brought before these tribunals, and although there is no obligation to accept the decisions rendered, with scarcely any exception, they are cheerfully accepted by the contending parties, and faithfully followed.

May we, too, soon learn this needed lesson. May we, too, soon learn that there are nobler and surer ways of settling trade disputes than by wars against classes by strikes and lockouts, by bullets and by bombs, by intimidation of employers and by starvation of employees. May we, too, soon see established in our midst the arbitration courts which Germany, across the Atlantic, Australia and New Zealand, in the Pacific, and Canada, our neighbor, have found a blessing to employer and employee and people. Arbitration courts are our only hope for industrial peace. Ours is the solemn duty to turn that hope into reality.

TRADE AGREEMENTS

By Ethelbert Stewart,
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The trade agreement seeks to preserve and maintain industrial peace. It does not settle strikes, though it frequently embodies the terms of such settlements. Its proper function is to prevent their occurrence and the bitterness out of which they grow. It provides the machinery for redress of grievances, real or imaginary, and adjusts wages to profits or commercial conditions either automatically, as in the sliding scale, or through conferences, instead of conflicts. It is the embodiment of the exhortation "Come, and let us reason together."

Primarily, of course, trade-agreements are wage agreements, and in many of them wages and hours of labor with arbitration clauses to cover misunderstandings concerning these specific points are the only questions considered. The more important agreements, however, cover all contingencies that could ordinarily arise in the occupation or industry, and provide peaceable means for the adjustment of unforeseen difficulties.

The earliest trade agreement of which there is record is one of the year 1795 between the employers and workmen of the printers' trade. This was a simple wage agreement of a very primitive type. The expansion of the agreement principle so as to cover more than mere wages and hours of labor began in the 30's, when an effort was made to control the employment of apprentices and "two-thirders."[1]

Since that time there has been a steady broadening of the field of subjects covered by the trade agreement. There has also been an extension of the geographical territory of the trade agreement. At first it was purely local in its extent, affecting usually a single establishment and at most a single city or district of small area. At present trade agreements may be national and even international in their scope. On this basis three kinds of agreements may now

[1]See "A Documentary History of the Early Organizations of Printers," by Ethelbert Stewart, Bulletin of the Bureau of Labor, No. 61, also "The Printers," by Dr. George E. Barnett, published by American Economic Association.

be distinguished. These are (1) the agreements which are purely local; (2) those which are co-extensive with the industry, and (3) those which cover large industrial areas or districts. Into the first class fall the establishment agreements and those covering a single city, such as the agreements of the carpenters, painters, etc. The general agreements are made between national organizations on both sides and are thus either co-extensive with the industry; or without being co-extensive with the industry nevertheless cover large districts and embody a number of local scales. As examples of uniform scales co-extensive with the industry may be cited those of the stove founders, the glass bottle blowers, flint glass workers, window glass blowers, brotherhood of potters, iron and steel workers, tin plate and sheet steel workers, tin house workers, etc. As illustrative of the district agreements may be cited those of the coal miners, and the American Newspaper Publishers' Association, the longshoremen's agreements, etc.

Again, there has been a tendency toward the gradual extension of the life of trade agreements. Originally they were for one year, now they frequently are for five years. Even in the building trades the life period of agreements has radically changed. Over twenty per cent of all the local unions of carpenters, for instance, have agreements, many of which are for three years even when a different wage scale is named for each year. The iron molders are likewise extending the time covered by agreements.

The iron molders union and the stove founders have had agreements since 1890. At present the agreement covers every important stove manufactory in the United States, and provides for almost every conceivable emergency. By virtually guaranteeing piece rates, it has abolished restricted production. This organization has a large number of trade agreements with job and machine foundries, and the tendency is to increase the life of these agreements, so that whereas formerly all were for one year, many are now for three years. The Foundrymen's Association, which a few years ago became inoculated with the "no trade-agreement" craze which struck the country, has checked somewhat the progress of agreements in this industry.

The sliding scale has frequently been made the subject of a trade agreement. In 1848, during the strike of iron puddlers in the Pittsburgh and Wheeling district, Horace Greeley suggested to

the disputants that they get together and agree on a fair rate of wages based on the selling price of iron, the agreement to be self-perpetuating and automatic, the wage rate going up and down with the selling price.[2] Though this suggestion was much discussed,

[2]*Strikes and Their Remedy.*—The recent strikes for wages in different parts of the country, but especially those of the iron puddlers of Pittsburgh, suggest grave and yet hopeful thoughts. In reading the proceedings of the strikers, an observer's attention will be arrested by their emphatic though unconscious condemnation of our entire social framework as defective and unjust. Probably half of these men never harbored the idea of a social reconstruction—never even heard of it. Ask them one by one if such an idea could be made to work, and they would shake their heads and say, "It is all well in theory, but it will never do in practice." But when they come to differ with their employers, they at once assume the defectiveness of our present social polity, and argue from it as a point by nobody disputed: "We *ought* to be paid so much (thus runs their logic) because we need and they can afford it." *"Ought,"* do you say, friends? Don't you realize that the whole world around is based upon *must* instead of *ought*? Which one of you, though earning fifteen dollars a week, ever paid five cents more than the market price for a bushel of potatoes, or a basket of eggs, or a quarter of mutton, because the seller *ought* to be fairly paid for his labor, and couldn't really *afford* to sell at the market rate? Nay, which of you well-paid puddlers ever gave a poor widow a dollar apiece for making your shirts when you could get them made as well for half a dollar, even though at the dollar you would be getting three days' work for one? Step forward from the ranks, you gentlemen that have conducted your own buying and hiring through life on the principle of *"ought,"* and let me make my obeisance to each of you! I shall do it right heartily, and with no fear of being rendered neck-weary by the operation.

Yet that *"ought"* is a glorious word when applied to the relations of business and of labor—we must not let it be forgotten. There are in it the seeds of a revolution more gigantic and pervasive than any Vergniaud or Kossuth ever devised. Heaven speed the day when, not only in iron but in all branches of industry, the reward of labor shall be regulated not by *"must,"* but by *"ought."* . . .

The most melancholy feature of these strikes is the apparent indisposition on either side to discover any law whereby these collisions may be terminated for the present and precluded in future. It seems so natural for the workman to say, "You tell us that you can pay but three-fourths of our former wages because of the low price of iron; now suppose we accept your terms, will you agree that our wages shall advance whenever and so fast as the price of iron shall improve?" "Yes," would be the natural and proper answer of the masters, "if you will agree that they shall be reduced whenever and so fast as iron shall decline still further." This being accepted the entire relation of capital to labor in this particular department is readjusted on the basis of proportion or common interest instead of that of arbitrary wages, evolving contrariety of interests. Now the puddler gets so much, although the iron should not sell for enough to pay him, and cares very little whether the business is prosperous or depressed, save as its suspension may turn him out of work. But with the establishment of proportion as a law of the trade, every worker's interests would be on the side of prosperity, and his wages every week depend on the price which iron should bear at the end of it.

But from neither party to this controversy do I hear one fruitful or reconciling word. From the journeymen's side, we have all manner of Jacobinic clamor against the oppressions of capital, wealth, monopoly, etc., but no practical suggestion for their removal. No one says, "Let us hire iron works (of which there are abundance shut up) and go to making iron as our own masters." Even in Wheel-

it was not until some seventeen years afterward, on February 13, 1865, that the Sons of Vulcan and the five representative iron manufacturers of Pittsburgh signed a wage agreement recognizing as its basic principle the sliding scale.[3] This organization merged with the Amalgamated Association of Iron and Steel Workers in 1876, the sliding scale being a recognized principle in all agreements made by it from that date to the present.

The sliding scale was made the basis of the agreement of 1902 between the American Flint Glass Workers Union, and Manufacturers Association, so far as the items of jelly glasses and common pressed tumblers were concerned and, as a result, the restrictions on production were taken off these, and the piece-rate guaranteed. The principle of the sliding scale was adopted by the Anthracite Coal Commission in its award and now regulates the wages of coal miners in the anthracite field. Friends of industrial peace and good wages

ing, where there has been a great meeting of iron workers to sympathize with and encourage the Pittsburgh puddlers, no voice uttered the creative words, "Stop depending on masters, and go to making iron for yourselves!" How is it that a course so obvious, so decisive, and now rescued from the fatal taint of novelty by a signal success, should remain unadopted and even unconsidered?

Since the above was written and published, the organization of the various branches of iron-making and manufacture on the basis of proportion or association has been earnestly considered by the workers of Pittsburgh, and several attempts at practical association are now in progress or in contemplation by them.—From "Hints Toward Reform," by Horace Greeley. Harper Bros., New York, 1850.

[3]Below will be found in tabular form the agreed scale of 1865 and the scale of 1910, side by side. In 1865 bar iron sold in Pittsburgh district for $123.20 a ton during practically the whole year, *i. e.*, 6.16 cents per pound. In March, 1910, the Pittsburgh price of bar iron was 1.65 cents per pound. A glance at the table will show that puddlers earned $6.50 per ton in 1865, and $6.12½ per ton in 1910. A puddler and helper will puddle one and a quarter tons in a day, of which the helper gets one-third and the puddler two-thirds.

1865.				*1910.*			
Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.	Selling Price per Pound	Puddlers Wages per Ton of 2,240 Lbs;	Selling Price per Pound	Puddlers Wages per Ton of 2,240 Lbs	Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.
$0.0250	$4.00	$0.0575	$6.50	$0.0100	$5.00	$0.0155	$5.87½
.0275	4.50	.0600	6.50	.0105	5.00	.0160	6.00
.0300	4.50	.0625	7.00	.0110	5.00	.0165	6.12½
.0325	4.75	.0650	7.00	.0115	5.00	.0170	6.25
.0350	4.75	.0675	7.50	.0120	5.00	.0175	6.37½
.0375	5.00	.0700	7.50	.0125	5.12½	.0180	6.50
.0400	5.00	.0725	8.00	.0130	5.25	.0185	6.62½
.0425	5.50	.0750	8.00	.0135	5.37½	.0190	6.75
.0450	5.50	.0775	8.25	.0140	5.50	.0195	6.87½
.0475	5.75	.0800	8.50	.0145	5.62½	.0200	7.00
.0500	5.75	.0825	8.75	.0150	5.75		
.0525	6.00	.0850	9.00				
.0550	6.00						

wish for the extension of this principle to the many industries to which it is applicable.

While, of course, wages and hours occupy the principal place in trade agreements, all points of possible controversy can be and usually are covered in the terms of carefully thought-out agreements. Thus the vexatious problems presented by "jurisdictional conflicts" were solved by the master plumbers of Chicago, by means of a joint agreement between themselves and all unions having membership in their employ, the agreement stating minutely and in specific terms the distribution of the work. Where building trades councils exist, joint agreements could eliminate all jurisdictional disputes by incorporating a specific allotment of all classes of work in the terms of the agreement. In this way local employers could solve, at least for themselves, these otherwise hopeless annoyances, whether or not the American Federation of Labor shall finally prove able to settle its "jurisdictional fights."

In similar fashion restrictions on output have been entirely eliminated in many industries by trade agreements with the unions. In others, such as the sanitary potteries, some branches of the glass industry, the gold-beaters, and many others, output restrictions are made subject to agreements, and are not left to the arbitrary fixing by union rules. In fact no devices, not even bonus systems and premium plans, have done so much to remedy the evils of restriction on output as has the open discussion of it in conferences called to effect trade agreements. The practices complained of, such as pace-setting, speeding up, piece-rate cutting, setting young against old and then discharging the old, practices which restriction of output was inaugurated to offset, are subject to review and elimination by agreement. A reasonable standard of efficiency is set up beside a reasonable day's wage, and both are defined; hence the object of restriction of output is gained without resort to it.

The glass bottle blowers have carried the principle of the trades agreement to the extent of making apprenticeship regulation directly subject thereto. This union had wage scale agreements with their employers as far back as 1846; trade agreements in the broader sense began in 1879 and still continue. At present the "scale committees" of both organizations, that is the employers and the workmen, meet yearly and agree upon an elaborate piece-rate list in addition to complicated working rules. Apprenticeship regu-

lations have been taken out of the constitution of the union entirely and made subject to the annual trade agreement. Owing to the encroachment of the blowing machine, the employers agreed to take on no apprentices during the present year, while the union agreed to a twenty per cent reduction on piece-rates in hand shops on all bottles which are also made by the machine, and further agreed to a regulation of hours which permits continuous operation in three eight-hour shifts, of such plants as must compete with machine-blown ware. To give up taking on more apprentices is not so much of a concession on the part of the manufacturers as might appear. The machine had thrown approximately a thousand blowers out of work, in a total of nine or ten thousand. To go on turning out more blowers would be to so glut the market with idle skilled blowers, that others would be tempted to erect factories, and non-union factories at that, thus increasing the volume of non-union product which the association members must buy up as jobbers to prevent its being retailed at cut rates.

On the other hand, many of the concessions made by both sides have been genuine. Thus the use of intoxicants, or even the bringing of such upon the premises of the factory, is prohibited and made a cause for discharge in the agreements of each of the three divisions of the glass industry. The longshoremen's agreements also prohibit the employer's foremen from selling liquor to the workmen and the men from having liquor on the premises.

Sympathetic strikes are regulated or controlled by the terms of many of the agreements. One growing objection on the part of the weaker unions, to the trade agreements of the stronger unions is that they prevent sympathetic support. There is a danger that in this, as in the control of union constitutional provisions by trade agreements, some employers' associations seek to go too far. Sympathy is deeper than collective bargaining or than trade unionism itself, and cannot be suppressed by parchments. To attempt to go too far in this direction endangers the parchment rather than the sympathy.

While the trade agreement is usually entered into between employers and unionized labor it is not at all incompatible with "open shop" conditions, except in cases where "open shop" is used as a subterfuge for non-union shops. Of course, where no organization is permitted and men are dealt with only as "individuals" there can

be no trade agreements. The employers may promulgate wage scales and working rules, but these are edicts, not agreements. Nevertheless, trade agreements need not necessarily involve "recognition of the union" for such as are oversensitive on this point.

The objections to open shop trade agreements on the part of trade unionists have to do principally with the disciplining of its members by the union. Open shop agreements, especially long time agreements, are disorganizing. The printing pressmen, for instance, find that when they make a three- or five-year agreement on an open shop basis, their members in that shop cease to pay dues. Rates and hours are fixed for three years. Union membership is not necessary to retention of employment and the workmen stop paying dues or attending the union meetings until just before the agreement expires. That was true of the coal miners in the anthracite field when the commission fixed conditions for a period of years, and it will always be found true in case of long time open shop agreements. Another objection to the open shop trade agreement is that the unions cannot guarantee to enforce the terms of their part of an agreement in shops where the violation may be by a workman who is not a member of the organization or whose position in the shop cannot be jeopardized by any attempts the union may make to discipline him. Open shop agreements can, therefore, cover little more than wages and hours; can at best only detail what the employer guarantees in the way of conditions.

Where the employer is a great corporation engaged in an enterprise toward which the labor involved in the agreement is only indirectly contributory, trade unions usually do not insist on closed shops. The machinist union, for instance, which, in case of small machine shops and with employers who are simply producers of machinery, are most insistent on card shop agreements, has a separate branch to deal with railroads, and this branch is entirely satisfied usually with open shops. The railroad company is in the transportation business and its machine shops are entirely subsidiary to its main purpose. If a railroad company agrees to pay a certain rate and work certain hours, it is not going to try to use non-union men to undermine that rate or those hours. There is not enough in it to be worth while; hence, in such a case, open shop agreements are safe enough for wage protective purposes.

In the case of a large association of employers, composed of

members operating union factories, "open shop," and in some instances non-union plants, the trade agreement is made to furnish a court of appeal for members of the union working in any plant covered by the association, whether that plant is union or not. This furnishes a redress for grievances for straggling members of the union working in an "open shop," which non-union employees in the same shop do not possess. This advantage operates in every instance to bring those employees into the union, thus unionizing all the open shops in the association.[4]

The first agreements in an industry are usually crude, and yet this is the critical period of experiment. New unions, and employers new to the trade agreement experiment, would benefit by the advice of experienced advisors. Thus the superintendent of one of the large Chicago packing houses complained that the "recognition of the union" with him had meant that he had 217 "shop committees" in the various departments of the plant, and that all his time was taken up meeting committees. The trouble here was that the trade agreement did not provide for the sifting of "grievances" through a central control inside the union. "Shop committees" should report their fancied grievances to the union as a whole or to its executive officers, who are usually able to tell real from imaginary wrongs. The employers should have but one committee to meet, and its personnel, while it cannot be named, can be controlled by the terms of the agreement to the extent that unreasonable hotheads and personally disagreeable persons can be excluded from it. The union above referred to was "smashed" because it was new, oblivious of the fact that unions cannot be born old. On the other hand, a general manager of a tin plate plant said he had conducted a union plant for eight years and had never been called upon by a committee. "If they have any troubles they fix them up," he said. Employers who profess to be in favor of the older conservative unionism, but intolerant of new unions which they proceed to "smash" are either not entirely ingenuous and frank, or are rather inconsistent. If half the money, time, and intelligence that is employed to smash new unions were devoted to sympathetic direction of their councils and education of their membership, they could be "aged" much faster.

Trade agreements have done more to humanize the conditions

[4]See Commons and Frey, Bureau of Labor Bulletin, No. 62.

of labor and minimize strikes than any other single instrumentality. They are entered into on the part of the employers by the employer himself or, in case of corporations or associations, by men higher up in the control, and representative of real interests. It is in the discussion of the terms of trade agreements that these men "higher up" often get their first inlook into those working conditions so fruitful of unrest. Entirely apart from wages and hours, conditions of labor which irritate or are considered by the workmen as intolerable are sometimes created by the overzeal or whim of a foreman, a "speed boss," or a gang boss. The real employer hears of these for the first time when he is called upon to discuss the terms of a trade agreement. Since, as a general rule, the higher up in the councils of the employers the more willingness to remove petty sources of irritation, the trade agreements and the discussions preceding them have done much to eliminate these.

The trade agreement enables the employer to have a voice in the affairs of the trade union, to control it in fact within the limits of the terms of the agreement, and, on the other hand, enables the workmen to control the acts of the employer and his subordinate foreman and gang boss, not only as to hours and wages, but as to treatment of men, sanitation, and general working conditions, where these are covered in its terms. It is the mutual working basis, the magna charta of each.

The extent of control possible to be exercised over strictly union affairs by employers, through the medium of the trade agreement, is evidenced by the Illinois Coal Operators' Association in forcing the reduction of the union's initiation fee from $100 to $10. It is true that some organizations, notably the International Typographical Union, declare that their constitutional provisions and established trade regulations are not subject to bargaining, trade agreements or arbitration. Nevertheless, since only the regulations and constitutional provisions in force when a trade agreement is made can affect its provisions, the increase in long-time agreements has tended to decrease the number of constitutional amendments and new working rules, since these cannot affect a very large number of establishments for a considerable term of years. As late as 1902 the New York Typographical Union No. 6 agreed with the United Typothetæ to submit to arbitration "such points as conflict with the present International Typographical laws."

The international, however, refused to sanction the arbitration. The attempt to control unions through trade agreements had in this case been carried too far.[5]

On the whole, however, there is not much opposition to this principle of mutual control by the leaders on either side. The Building Trade Contractors' Associations of Chicago and elsewhere, the stove manufacturers' associations and many other groups of organized employers found it impossible to control their own membership in the matter of wages paid and working hours, and were more than willing to have the assistance of the unions in making these conditions uniform, to eliminate this element of uncertainty from competitive bidding or prices. Uniformity of wages is as important to manufacturers in competitive industries as fair earning opportunity is to the workers. Associations of manufacturers have never been able to maintain a uniform wage scale. This can only be assured when, as in the case of the Stove Founders' National Defense Association, a national employers' organization enters into a trade agreement with a national labor organization like the iron moulders. By the terms of this agreement, each manufacturer must keep an agreed-upon printed book of piece rates posted in the shop. The workmen will see to it that the rates are paid. This association made its first agreement with the national union in 1890 and has had no serious trouble since. The history of these agreements is eloquent with argument for the abolition of unnecessary strife.[6]

Labor leaders, on the other hand, are frequently glad to get clauses into trade agreements which will enable them to hold extremists and discordant elements within the union ranks in check. It is not uncommon for trade agreements to contain a clause to the effect that during the life of that agreement its terms are inviolable, anything in the constitution of the union, or any vote taken by it to the contrary notwithstanding. That the rank and file of organized labor are conservative and impelled to radical action only by agitating leaders has not been the experience of those who have been brought in contact with them. Trade agreements, therefore, make

[5]The discussion of the "sacredness of treaty obligations" and the power of treaties to set aside laws and even constitutional provisions growing out of the California-Japanese incident reads very much like that between the International and the Typothetae over trade agreements.

[6]See "Conciliation in the Stove Industry," by Prof. John R. Commons and John P. Frey, Bulletin of U. S. Bureau of Labor, No. 62.

for conservatism, and are generally opposed by radical organizations such as the Industrial Workers of the World.

When the American intellect sincerely and squarely expends as much effort to solve the problems of labor as it has to sell the products and reduce the wages of labor, those problems will be solved. As yet, American intellect has left the problems of labor to labor and interested itself only in preventing labor from solving them. The solution of the seniority problems presented by the dual organization membership contentions between the Brotherhood of Locomotive Engineers and the firemen's organization on railroads west of Chicago this spring shows that there are no irreconcilable conflicts, no unsolvable problems. An unsolvable problem in the labor world can only grow out of a situation which, if it presents unsolvable problems, must be abandoned.

Edicts by employers, however liberal on the money side, will never quite fill the place of mutual trade agreements. They lack the machinery for humanizing industry. We have seen lately at McKees Rocks, and at Bethlehem, the result of carrying working conditions to the point where unorganized, non-union men revolt. The most widespread labor revolt that ever occurred in this country, that of 1877, was a revolt of unorganized men and the immediate cause was not directly a question of wages.

There is always danger of strife where there is no one in authority whose business it is to see that the discipline so necessary for the economic conduct of any plant does not become dehumanized; no machinery for disciplining discipline when it overdoes itself and becomes a hatred generator, and no check on small men with large authority, that is, no check upon the use of authority by men who had been given power over other men solely because of their technical knowledge or ability to do things, to direct others in the doing of things, and to "get out the goods," without regard to their ability to get along peacefully with men. There are "production engineers," "speed bosses," superintendents of everything except the humanities of work. But there is always danger where there is no escape-valve for moral explosives. The "grievance committees" of trade unions may be an intolerable nuisance to some employers of labor who feel justified thereby in denying their employees the privilege of organizing. It would, however, seem to be the part of wisdom for such employers to fill this place in

some manner, either by the appointment of some one who, in constant touch with the highest officials, and who, with authority direct from them, shall act as a superintendent of the humanities of discipline and of work, minimizing the occasion of "grievances," or in some other manner prevent the Leyden jar of human hate from becoming overcharged.

THE SETTLEMENT OF DISPUTES AMONG THE MINE WORKERS

By T. L. Lewis,
President of the United Mine Workers of America, Indianapolis, Ind.

The settlement of labor disputes is a question of such great importance that it should receive the serious consideration of every man who has any regard for his country or a proper respect for its institutions. The individual who can devise a method that will settle labor disputes on a basis of equity to all concerned, and prevent industrial strife and strikes, will perform a great service to his country and deserve the gratitude of the Nation. It is well known that differences of opinion between employer and employee lead to disputes that cause industrial strife and strikes. Such disputes usually take place over the proper division of the results of labor performed. To settle labor disputes intelligently we must understand something of the contributory cause of disagreements between the employer and employee.

The rapid development and evolution of our industrial system is the direct result of laws favorable to such development, mineral resources easily accessible, inventive genius, and the high standard of efficiency of the men employed in our various industries. Our laws are extremely favorable to the development of industry for the reason that corporations may be formed with little or no capital. What is mostly necessary to convince financiers is that the industry to be developed will be able to pay interest on and refund borrowed capital without great risk. If the men who organize a corporation are known to have been successful as promoters of industrial enterprise, or if they are recognized as men of sound business judgment, it is not difficult for them to secure the necessary capital to develop an industry.

The mineral resources of this country are the basis of our industrial greatness. The low cost of producing coal and other minerals has given us the most complete and diversified industrial system of any country in the world. It is a matter of common knowledge that the mineral resources of this country, whether owned by indi-

viduals or by the government, have been acquired or purchased entirely too cheap by the "Captains of Industry." The high standard of efficiency of the industrial wage earners of this country is fully recognized. This high standard of efficiency is due largely to the competition between the men who labor and the desire of each individual to excel his fellow man in the amount of labor done, as well as in the quality of the product produced. The incentive that urges men on is the amount of wages they must receive in order to provide for those depending upon them.

The inventive genius of man has contributed much to the development of our industrial greatness. Invention has brought into existence the labor-saving machine. The labor-saving machine has been brought into direct competition with the individual wage earner. The natural result is that the individual worker is rapidly being displaced by the labor-saving machine. This competition between the machine and the man has created an industrial system in which the man is made subordinate to the machine.

If not restricted or controlled by the government or some other power, the corporation and the labor-saving machine under its control are the two elements in our industrial affairs that would ultimately enslave the wage earners of our country.

The laboring men have long since realized that by individual effort they can never hope to secure a fair share of the results of their labor. Necessity compelled the laboring men to associate with one another in order that they could, by and through the power of organization, sell their labor to better advantage than they could hope to do as individuals. In the forming of labor unions, the laboring men simply followed an example set by the employers when industrial corporations were formed.

Human selfishness is an important element to deal with in the adjustment of labor disputes. Human selfishness is greatly intensified under the name of a corporation. Men as individuals would not think or care to do as individuals what they are doing as representatives of a corporation. The attempt of a corporation or employer to increase profits by the purchase of labor at the lowest possible standard, and the resistance of the wage earner against selling his labor at such a price as would not provide him with an American standard of living, has created labor disputes, or the Labor Problem.

The mining industry is the most important factor in connec-

tion with our industrial development. The mining communities of our country have been the scene of some terrible industrial conflicts. Human selfishness has prompted the employer to disregard the rights or the welfare of the mine workers. Wages were reduced to such an extent that starvation for the mine workers and bankruptcy for the mine owners was the natural result of this deplorable condition. The mine owners in order to earn profit on their investment imposed conditions of employment that were unbearable. Disputes and strikes were a common occurrence with apparently no way of preventing them.

It finally dawned upon the more intelligent and conservative of the mine owners, as well as the leaders of the mine workers, that there must be some community of interest between employer and employee. Acting on this theory, a conference of operators and miners' representatives was called together over twenty years ago. At that conference was inaugurated what is now known as the joint conference method of negotiating and agreeing upon the terms of a wage contract to govern the mining industry in various states.

The movement inaugurated at that time was confined to Western Pennsylvania, Ohio, Indiana and Illinois, and met with varying success and failure until it passed out of existence in the year 1895. The joint movement as it affected Western Pennsylvania, Ohio, Indiana and Illinois was re-established in the year 1898, when a wage contract was secured for the states named and an eight-hour work-day was established. The joint conference method of arranging wage agreements has grown to include the States of Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Kansas, Arkansas, Oklahoma, Missouri, Texas, Colorado, Montana, Wyoming, Washington, West Virginia, Kentucky and Tennessee. In a number of the states named, wage contracts are negotiated and agreed upon to include every coal mine within the state and every employee working in and around the mines.

The method adopted by the mine owners and the mine workers is to call what is known as a joint convention of representatives of operators and miners within a state or a group of states producing coal. When the joint convention is held, it is organized usually by the selection of an operator as a presiding officer. A miner and an operator are selected as secretaries of the convention. A creden-

tial committee of operators and miners is appointed to report on those who are entitled to representation in the convention.

After the preliminary work of organizing is concluded, a committee on rules and order of business is selected, and the rules adopted by the convention are different from the ordinary parliamentary rules governing deliberate bodies. It requires a unanimous vote of operators and miners to adopt any proposition affecting the proposed wage agreement, whether it is wages, hours of labor or conditions of employment. The reason for adopting a rule requiring a unanimous vote on the questions of wage agreement is to give the employer and the employee equal voting power. By this arrangement there must be a mutual agreement in order to reach final conclusions. The presiding officer in our joint conventions has no authority to cast a deciding vote on any questions affecting the wage contract.

When the joint convention is organized and the rules are adopted, it is usual for the miners' representatives to present a proposition which includes their demands affecting wages, hours of labor and conditions of employment. It is also customary for operators or mine owners to submit a counter proposition, each side having prepared its respective propositions in its own meetings or conventions.

The submitting of the propositions in open convention by the miners' and the operators' representatives is then followed by a general public discussion of the merits of the propositions submitted by the mine owners and the miners. This general discussion takes place in order that both operators and miners who attend the convention may understand the proposition submitted by either or both sides and also acquire a knowledge of the merits of the claims of the operators' and the miners' representatives.

Following the general discussion of the propositions in the joint convention of operators and miners, it is usual to submit the questions at issue to a committee of operators and miners. This committee is known as the joint scale committee and is composed of an equal number of representatives of operators and miners, together with the officers of the respective organizations who act in an advisory capacity.

This joint scale committee, composed of the representatives of the operators and miners, adopt rules to govern their delibera-

tions similar to the rules adopted by the joint convention. The operators and the miners each having equal voting power, and questions that are considered must have the support and unanimous vote of the operators and miners before such questions can be adopted as a part of any proposed wage contract.

The joint conference method of settling disputes and arranging wage contracts to govern the mining industry has prevented many an industrial conflict between the mine owners and their employees. It has done much to give stability to the mining industry of the country and to improve the conditions of employment surrounding the mine workers. The joint convention method is one in which the employer and employee are brought in contact with each other for the purpose of understanding their respective positions and to arrive at conclusions that are equitable to all concerned. This method of settling disputes, when adopted and practiced, in its broadest application, establishes as its basis the following essential features:

(1) Both employer and employee must recognize that there is a community of interest between them and that each is just as essential as the other in the development of the industry affected.

(2) This method brings the employer and employee into closer relationship and requires each to respect the rights of the other.

(3) It requires that the mine owner must have a knowledge of the conditions surrounding the mine worker, and it compels the mine worker to understand the business affairs of the men who own and operate the mines.

(4) It fixes intelligence and a general knowledge of the mining industry as a basis for an intelligent discussion of the questions at issue. It requires the exercise of good judgment and a respect for the rights of the general public as well as the rights of the mine owner and mine worker.

The final conclusions of the joint convention method depend upon the ability of the operators' or miners' representatives to present their respective claims in such a manner as will pass the judgment of the American people. The weakness of the final success of the joint movement in permanently settling disputes is due to the following conditions:

(1) The inability of the operators and miners to agree upon what should be a fair profit on investments in the mining industry

and a fair standard of wages for the men who labor in and around the coal mines.

(2) The disposition of the operator to conceal the facts from the miners in regard to his business and the desire of the miners to refuse to acknowledge conditions that they know to exist.

(3) The desire of both operators and miners to depart from a discussion of the facts and to appeal to the sentiment or prejudice rather than the intelligence and reason of those who are representatives in joint convention.

(4) The disposition to substitute might for right, when facts have failed to convince either party to the conference that there is some middle ground upon which a settlement should be reached.

(5) The antagonism of the operators in a number of mining communities and the declared intention of those operators that they will not, as long as it lies within their power, permit their employees to organize.

(6) The inequalities that exist from a competitive standpoint, which give the mine owners in the organized mining districts an opportunity to complain of the competition from the unorganized sections of the country.

I have endeavored to point out those features in the joint movement of arranging wage contracts and settling disputes that should appeal to every intelligent man. In addition to this, I have endeavored also to explain those features which may be regarded as an obstacle in the way of the permanent success of the movement. Industrial disputes should be settled without interfering with the operation of the mines or any other industry. In order to settle disputes and establish industrial peace in this country the employer and employee must have a greater respect for each other's rights. The right of the wage earner to form labor unions must be recognized and respected. The right of the employer to manage his business in his own way must also be recognized. When the employer understands that he is unable to develop any industry without the assistance of the wage earner, then there is a community of interest established, and this fact must be recognized by all concerned.

When the community of interest is established, then the employer and employee should endeavor to agree upon what is a fair profit on invested capital and a fair wage for the labor done in

the development of the industry and the production of coal. The best method of arriving at such conclusions is for the employer to be perfectly frank in explaining to the representatives of his employees the extent of his business, the amount actually invested and the earning power of the industry of which he has charge.

The employees or their representatives should be conversant with every detail of the business and be able to explain the demands of the employees and why they are entitled to the wages and conditions of employment that they are attempting to secure.

The struggle of the employer and employee for the division and possession of what a dollar represents is the basis of every dispute that arises in connection with the adjustment of wages, the conditions of employment or the hours of labor. The same principle applies in the commercial affairs of the country and has caused nations to declare war, squander millions of dollars and sacrifice hundreds of thousands of lives. In our industrial system, a solution of the labor problem will depend entirely upon two things—our ability to curb human selfishness and our power to eliminate fictitious values as the basis upon which profits shall be earned in any industrial enterprise. Publicity is one of the necessary things in order to arrive at intelligent conclusions and settle disputes in any industry of the country.

THE TRADE AGREEMENT IN THE COAL INDUSTRY

By Frank Julian Warne, Ph.D., New York,
Author of "The Coal Mine Workers" and "The Slav Invasion."

Much greater progress could be made in the settlement of our so-called labor problems, and in the better organization of our industrial state, if the employers and the public became acquainted with and would recognize the differences between trade unionism, socialism, anarchism, and the efforts of the social worker. I have the past year more than ever become convinced of the necessity of this distinction being emphasized as a result of testing audiences before whom lectures were given on "The Labor Movement: Its Social Significance." In nearly every instance I found that the public and the employers, as represented in the audiences, jumbled the trade unionist, the socialist, the anarchist, and the social worker all together and either denounced or praised them all in one breath.

There are fundamental differences between all these which prevent their being included in the same classification. It is true that the anarchist, the socialist, the trade unionist, and the social worker are all protesting against and fighting the evils of capitalism. At the same time not only are the theories of anarchism and socialism opposed fundamentally, the former meaning practically no government and the latter all government, but socialism and trade unionism are also by no means the same thing. The socialist, in brief, wants the government to own the means or instruments of the production and distribution of wealth—he would have the railroads, the coal mines, the steel plants operated by the government for the general welfare, and not by private capital for profit. The trade unionist, on the other hand, will have none of this—he accepts the present capitalistic system of production which allows to capital its interest and dividends and to the management its salaries, but would change or modify somewhat the system as it affects wages. In substance, trade unionism declares that the welfare of the wage-earner does not necessarily involve the overthrow but merely the modification of our present capitalistic system of the production and distribution of wealth. This he would bring about

through collective bargaining,—by means of joint conferences between representatives of employers and employees for determining wages and conditions of employment. Out of these conferences comes the trade agreement. This trade agreement is the labor movement's reply to socialism.

The trade agreement is already an actual fact and is working fairly successfully in many of the important industries of the country. It is to be found on all our leading railroads, the engineers, firemen, conductors, and trainmen, through their respective brotherhoods, entering into yearly agreements with the transportation companies. We also find it in the hat industry, between the iron moulders' union and their employers, among boot and shoe makers, among metal polishers, in the building trades, between compositors and publishers, in some branches of the iron and steel trades, in the glass industry, between garment manufacturers and their workers, in the pottery industry, between the bridge and structural iron workers and their employers, in the shipping industry on the Great Lakes between the longshoremen and the vessel owners, and in the coal mining industry.

The fundamental principles underlying the trade agreement are the same in all these industries, their form of expression differing, however, in details. An idea of these principles can be gained from a study of those formulated by the Interstate Joint Conference of the coal operators and mine workers of what is known as the central competitive soft coal territory, which includes western Pennsylvania, Ohio, Indiana, and Illinois. These principles are as follows:

First. That this joint movement is founded, and that it is to rest, upon correct business ideas, competitive equality, and upon well-recognized principles of justice.

Second. That, recognizing the contract relations existing between employer and employee, we believe strikes and lockouts, disputes and friction, can be generally avoided by meeting in joint convention and by entering into trade agreements for specified periods of time.

Third. That we recognize the sacredness and binding nature of contracts and agreements thus entered into, and are pledged in honor to keep inviolate such contracts and agreements, made by and between a voluntary organization, having no standing in court, on the one hand, and a merely collective body of business men doing business individually or in corporate capacity on the other, each of the latter class having visible and tangible assets subject to execution.

Fourth. That we deprecate, discourage, and condemn any departure

whatever from the letter or spirit of such trade agreements or contracts, unless such departure be deemed by all parties in interest for the welfare of the coal mining industry and for the public good as well, and that such departure is first definitely, specifically and mutually agreed upon by all parties in interest.

Fifth. Such contracts or agreements having been entered into, we consider ourselves severally and collectively bound in honor to carry them out in good faith in letter and spirit, and are so pledged to use our influence and authority to enforce these contracts and agreements, the more so since they rest in the main upon mutual confidence as their basis.

The machinery for the practical accomplishment of these objects is the joint convention. This usually meets once a year, and after discussions of the points at issue, sometimes extending over several weeks, a contract as to wages and conditions of employment for the scale year from April 1st to March 31st, is signed by representatives of each side. While this agreement settles a number of very important questions, it should not be inferred that both sides are perfectly satisfied.[1] This would be expecting the millennium in the industrial world.

But certain fundamental principles have been established by this joint movement. The "right" of the mine workers to organize for their own protection and for the improvement of their condition of employment is recognized by the operators; the "right" of the men to be represented in settling disputes and agreeing upon the prices for which their labor is to be sold is conceded by the operators treating directly with the officers of the United Mine Workers of America. These two principles are now firmly established in the central competitive coal fields; in the territory comprising Missouri, Kansas, Arkansas, Indian Territory, and Texas, and also in about a dozen other coal-producing states. Not only do the operators of those states who are parties to the agreement depend largely upon the United Mine Workers to enforce upon non-union employees as well as upon its own members the agreement entered into, but they also look to the union rather than to themselves to see that the operator who might attempt to violate the contract is compelled to live up to its terms. In many cases the operators have gone so far as to recognize all their employees, with but few exceptions,

[1]As to the questions of agreement and disagreement, as well as for a more detailed account of the operation of the joint conference machinery in the coal industry, the reader is referred to the author's "The Coal Mine Workers," Longmans, Green & Co., New York City.

as members of the United Mine Workers. This joint movement in the bituminous coal fields has thus established well-defined rights on both sides.

The central competitive soft coal territory, so called because the states comprised in it have a common market for their product at the Great Lake ports, includes also West Virginia. But West Virginia is not a party to the joint conference scheme, which has for its object the control of the competitive conditions affecting the production and marketing of coal from these five states. It was against just such conditions as are presented to-day by the uncontrolled competition of West Virginia that the movement was inaugurated among the operators and mine workers in 1885. The first convention was held at Columbus, Ohio, in February, 1886, West Virginia then being represented by both operators and mine workers.

Those at the head of the movement realized at the beginning that the problem was a control of competitive conditions in the fields having a common market. Such control, to be effective, meant that the operators and mine workers in one district should have no unnatural advantages over those in any other district. Failure to control these varying conditions meant that the coal of one field or state would enter the market bearing a lower price than the product of the other district, and naturally, the lower priced commodity, other things being equal, would undersell that bearing a higher price. The tendency under such conditions would be that eventually the price of coal from all the districts would reach the level of the cheapest, resulting in forcing out of business those operators having a higher cost of producing their coal. Thus the interstate movement could recognize no favored district, but all the innumerable elements which enter into determining the price of coal, such as natural advantages, nearness to market, cost of transportation, the quality of the coal, the price of mine labor, etc., had to be taken into consideration and if possible so regulated that the product from all the districts should bear very nearly the same price when it reached a common market.

The first attempt in this direction met with failure and very largely under circumstances somewhat similar to those presented in the present situation. Then the operators of one district, very soon after the movement was launched, complained that operators in another district possessed advantages which enabled the latter

to put their coal on the market at a lower price and by thus underselling the former to threaten their business success. Attempts were made then, as now, by those believing themselves to be at a disadvantage to remedy the particular conditions of which they complained. Friction naturally resulted, and failure after failure to keep the basis agreed upon was apparent in the different districts. So many unforeseen factors continually entered in to disturb temporary adjustments that the agreement could not keep the central competitive districts together, West Virginia, Illinois, and Indiana being the first states to withdraw. Within two years from its inauguration, the movement had practically gone to pieces, with the exception of state agreements in some of the districts.

In 1898, however, following the strike in the central competitive territory the preceding year, the Interstate Joint Conference machinery was restored to the four districts of western Pennsylvania, Ohio, Indiana, and Illinois and has been in operation most of the time since then. West Virginia has not been a party to its deliberations and agreements, however, and herein lies the weakness of the entire movement for the future. As long as the West Virginia operators and mine workers are outside the conference, the very foundation of the movement in the central fields is threatened. And until that state is brought within the jurisdiction of the interstate agreement, it cannot be said with certainty that the permanency of the joint conference method of preventing industrial wars between employers and employees in the coal industry of the country is assured.

The trade agreement in the anthracite industry has taken a somewhat different form, although its fundamental principles are the same. In the soft coal territory referred to, the joint conference was the outgrowth of the efforts of operators and miners themselves to settle their own differences. In the hard coal industry, the trade agreement principle was forced upon the operators by the intervention of President Roosevelt in bringing to a close the memorable strike of 1902. The establishment of this principle was among the demands of the United Mine Workers which brought on that great struggle. Out of the throes of that five months' strike and through the decision of the Anthracite Coal Strike Commission has come one of the most remarkable and, all in all, one of the most successful experiments in industrial conciliation that this country has so far witnessed.

The commission, in its awards, established a board of conciliation whose object was to settle the disputes between the contending parties. The constitution of this board was decreed as follows by the commission's award:

> That any difficulty or disagreement arising under this award, either as to its interpretation or application, or in any way growing out of the relations of the employers and employed, which cannot be settled or adjusted by consultation between the superintendent or manager of the mine or mines, and the miner or miners directly interested, or is of a scope too large to be so settled and adjusted, shall be referred to a permanent joint committee, to be called a board of conciliation, to consist of six persons, appointed as hereinafter provided. That is to say, if there shall be a division of the whole region into three districts, in each of which there shall exist an organization representing a majority of the mine workers of such district, one of said board of conciliation shall be appointed by each of said organizations, and three other persons shall be appointed by the operators, the operators in each of said districts appointing one person.
>
> The board of conciliation thus constituted shall take up and consider any question referred to it as aforesaid, hearing both parties to the controversy, and such evidence as may be laid before it by either party; and any award made by a majority of such board of conciliation shall be final and binding on all parties. If, however, the said board is unable to decide any question submitted, or point related thereto, that question or point shall be referred to an umpire, to be appointed, at the request of said board, by one of the circuit judges of the third judicial circuit of the United States, whose decision shall be final and binding in the premises.
>
> The membership of said board shall at all times be kept complete, either the operators' or miners' organizations having the right, at any time when a controversy is not pending, to change their representation thereon.
>
> At all hearings before said board the parties may be represented by such person or persons as they may respectively select.
>
> No suspension of work shall take place, by lockout or strike, pending the adjudication of any matter so taken up for adjustment.

This board of conciliation has been kept in existence, down to the present time, by mutual agreement between representatives of the operators and miners.

The board was not designed to pass upon all the questions growing out of the relation of employees and employers in the anthracite industry. It is in a sense a final court of appeal, and before any disputed point can come before it for settlement efforts must first be made by the interested parties to settle it among themselves. To this end the rules of procedure adopted by the board at its organization meeting provide that:

If any employee or body of employees have any grievance or complaint growing out of the interpretation of the awards of the Anthracite Coal Strike Commission, or out of the application of said awards or in any way growing out of the relations of employees or employer, said employee or employees directly interested shall present such grievances to the foreman directly in charge of the mine. If there shall be a disagreement with the foreman or a failure on the part of the foreman to satisfactorily adjust such grievances, the employee or employees directly interested or a committee of same shall request an interview with the superintendent or manager of the mine or mines for the purpose of adjusting said grievances. In case of failure to arrive at a satisfactory adjustment of grievances the employees shall present in writing such grievances to the members of the board of conciliation representing the district in which the mine or mines are located, stating fully the grievance which they desire to have adjusted and offering satisfactory proof that efforts have been made to arrive at an adjustment with the superintendent or manager. In case of a failure on the part of the superintendent or manager of the mine or mines to grant an interview to the employee or employees within ten days, the said employees may present in writing to the members of the conciliation board representing their district proof that they have made reasonable efforts to secure such interview. In such case the board of conciliation or the members of the board representing the said district will endeavor to secure for them an interview with the superintendent or manager of the mine or mines in question.

Only after the above action has been taken and the grievance still remains unsettled does the case come formally before the board. It then notifies the company or operator with whom such difficulty or disagreement has arisen, and requests from it or him a statement setting forth the reasons for not adjusting the matter. Upon the receipt of such a statement the board uses its discretion in requesting the presence of both parties to the disagreement for a full and complete hearing of the case. Provision is also made for the employers to present their complaints to the members of the board representing the district in which the mine or mines are located, the board receiving such complaints and calling for a statement from the employees directly concerned relative to the reasons for such complaint or disagreement, and if the board deems it necessary it will request both parties to the issue to be present before it for a hearing of the case.

Inasmuch as the award of the strike commission provides that no suspension of work shall take place pending the adjudication of any matter brought before the board for settlement, the latter has ruled, with the view of preventing strikes and lockouts, that it

will not take up and consider any question referred to it unless the employees shall remain at work, with the understanding that if the board finds the grievances justifiable, its adjustment shall be retroactive.

Thus in both the soft and hard coal industries of the United States has been established the trade agreement principle of preventing strikes and lockouts and industrial disturbances generally. No one who is familiar with the conditions in these great industries both before and since this principle was established can do other than record his emphatic conviction that it has been of inestimable value to the peaceable conduct of those industries. Its successful operation proves the existence of a practical method of doing away with industrial wars.

One point in particular needs to be emphasized, as it takes away much of the strength of the criticism aimed at the trade agreement method for settling disputes between capital and labor. This point is the fact that under its operation in the soft coal industry there has been effected a reduction in wages as well as increase in wages, and this reduction has been brought about peaceably and without recourse to a strike on the part of the mine workers or a lockout by the operators. This was in 1904, when the proposal of the operators for a reduction of wages was submitted to a vote of the mine workers of the districts comprised in the central competitive territory. This ballot was taken on Tuesday afternoon, March 15th, between 1 and 6 o'clock, the mines being closed in these particular coal fields between those hours in order to give every mine worker an opportunity to vote. The balloting was upon the direct issue: The operators' proposition, or a strike. The result was in favor of a continuance of work under a reduction in wages by a vote of 101,792½ to 68,485½. The fraction of a vote in the totals is explained in the fact that boy members each have one-half a vote. In a circular to the mine employees in the districts affected, sent out prior to the balloting, the national officers of the United Mine Workers stated that industrial conditions generally were adverse to the success of a strike at that time, and they recommended the acceptance of the operators' proposition. This one fact—this voluntary acceptance of a wage reduction—would seem to place the trade agreement machinery on a sound and enduring foundation as a part of the coming industrial state.

While the joint movement was resumed in the central competitive soft coal territory in 1898, it has not been in continuous operation, there having been years when the miners and operators were unable to come to any satisfactory understanding. Under such conditions, it has nearly always been the case that trade agreements were entered into between the miners and operators of the separate states. This is the situation at the present time. It is important to note that during the continuance of the agreement of contract no strike or lockout of any serious proportions has occurred in any of the states subject to its jurisdiction. In the four years preceding 1898, during which the agreement had lapsed for various causes, strikes and lockouts and general industrial unrest among the mine workers were the rule rather than the exception. It does not follow, however, that the joint agreement prevents absolutely all possibility of industrial disturbances—this power is not claimed for the movement even by its most ardent advocates. It does tend, however, to preserve industrial harmony between the two conflicting interests, secure more stable market and labor conditions, and reduce to a minimum the possibility of strikes and lockouts.

THE WAGE SCALE AGREEMENTS OF THE MARITIME UNIONS[1]

By Ralph Kendall Forsyth,
Stanford University, Cal.

Any intelligible discussion of the wage scale agreements of the maritime unions must necessarily take into consideration the industrial conditions out of which these agreements were evolved. It will, therefore, be necessary first of all to familiarize the reader with the early conditions of the shipping industry of the Pacific Coast, as typified by its principal port, San Francisco. Secondly, to review briefly the early attempts of the sailors at concerted action, which ultimately resulted in permanent organization among the seamen and shipowners, and thereby made possible and necessary the wage scale agreements. Thirdly, to discuss, in relation to the wage scale agreements, the crimping system, maritime legislation,

[1]The data for this article was obtained from the following sources:

The files of the "Coast Seamen's Journal" in the Leland Stanford Junior University Library. The earlier files of the "Coast Seamen's Journal" in the office of the "Coast Seamen's Journal" in San Francisco, which the writer was kindly permitted to use by the present editor, Mr. W. Macarthur. Probably the most valuable material was obtained from the original agreements between the Sailors' Union of the Pacific and the various companies and shipowners' associations of the coast, which the writer was permitted to use through the courtesy of the secretary pro tem. of the Sailors' Union of the Pacific, Mr. E. Ellison. An article in the "Coast Seamen's Journal" for July 8, 1908, "First Coast Seamen's Unions," by Dr. Ira Cross, of Stanford. Also a chapter from the manuscript of his "History of the Labor Movement in California." Other material was also placed at my disposal by him. Various reports of the Bureau of Labor Statistics for the State of California have been freely consulted.

Besides the above sources, the constitutions, by-laws and working rules of the various unions and employers' associations were used. The last three pages of this article contain the gist of information obtained by the writer from personal interviews with Mr. H. L. Stoddard, secretary and treasurer of the Shipowners' Association of the Pacific Coast, and with Mr. E. Ellison, secretary pro tem. of the Sailors' Union of the Pacific. Numerous suggestions and ideas obtained from the lectures of Dr. T. S. Adams, of the University of Wisconsin, and Dr. J. M. Motley, of Stanford University, have been incorporated. The substance of a very considerable portion of this discussion is contained in a thesis presented as partial requirement for the master's degree to the Department of Economics of Leland Stanford Junior Universty, May, 1909. The writer wishes to express his appreciation to Miss Grace Holt, of the English Department of the Santa Barbara High School for her many kindnesses and helpful suggestions in the preparation and proofreading of this paper.

and the Shipowners' Association,, citing typical agreements. And finally, conclude with a summary of the present situation.

This discussion will be confined to the maritime unions and conditions as they exist on the Pacific Coast, for it is here that the highest degree of organization among the seafaring craft has been reached. Not that there has been nothing accomplished in this regard in the Atlantic and Gulf States, or on the Great Lakes, but, rather, that the maritime unions of the Pacific coast have been the leaders in this respect, and may be taken as typical.

San Francisco being the center of the Pacific shipping, having two-thirds of the import trade and one-half of the export trade of the Pacific Coast, is also the center of organization among the various branches of labor employed in connection with that industry. These branches include sailors, firemen, cooks, stewards and waiters, bay and river men, fishermen, engineers, masters, mates, and pilots. They are organized either on the purely trade union principle, as in the case of the sailors, firemen, etc., or in the ostensibly beneficial and fraternal form, as in the case of the masters, mates, and pilots. Practically all the organizations representing these crafts maintain branches in the larger ports of the coast, but the headquarters in each case is located in San Francisco. It may, therefore, be said that treating of the conditions of maritime labor in San Francisco, embraces that question as it exists throughout the entire length of the Pacific Coast.

While these various organizations exist and each has its influence in its respective craft, the sailor, the man before the mast, is the primary or basic element in the shipping industry, from which it follows, that the conditions of all labor in that industry are determined very largely by those of the sailor. Since the Sailors' Union of the Pacific represents this primary or basic element, this study of the wage scale agreements will center about it as the leader of the coast maritime unions in this regard. The transactions between this union and the shipowners of the coast afford the key to the existing conditions.

Prior to the discovery of gold in California, San Francisco was not considered a port of any importance, but immediately after the discovery of gold, in 1848, her rating as a port quickly changed. Hundreds of ships entered the bay, but all of the crews forthwith deserted and made their way to the gold fields. Such captains as

were able to get their ships to sea again found it necessary to comply with the demands of the crew for an extortionate wage, which, during the intense part of the gold rush, reached the handsome figures of $200 and $300 per month for the common sailor. This condition, obviously, was abnormal and of brief duration. The reaction set in during the first half of 1850. Men who had failed to find their fortunes in the gold fields of the interior were returning to the coast discouraged and without means to pay their passage to their homes in the Eastern States. The captains were not slow to take advantage of this opportunity to reduce the sailor's wage to the nominal sum of twenty-five dollars per month. The first strike of August, 1850, followed, but the larger number of men eager to return to their homes in the East were anxious to ship with meager or no wages and the strike accomplished nothing. However, conditions continued to fluctuate during the 50's, owing to the opening of new gold fields in different parts of the state, and at times captains found it impossible to obtain crews for the trip out of San Francisco Bay. Boarding-house keepers and other middlemen assisted in obtaining crews, and shanghaiing was the method frequently resorted to in order to obtain the full crew.

By 1866 the leaders among the sailors had conceived the idea of organization, and in January of that year "The Seamen's Friendly Union and Protective Society" was organized. This union had a small membership from the beginning and soon passed out of existence. Twelve years later, in February, 1878, "The Seamen's Protective Union" was organized. A resolution was adopted pledging the members not to ship on any coasting vessel for less than thirty dollars per month. Originally the organization was composed of about one hundred charter members, but shortly afterward was increased to about two hundred. It enjoyed a rapid growth for several months, and by April had a membership of 600. Owing to depression of trade and lack of continued enthusiasm on the part of its members, however, this union followed in the wake of its predecessors, and after a few months passed out of existence.

Nothing further was done in the way of attempting organization until 1880. In August of that year the "Seamen's Protective Association" was organized. On account of the opposition of the boarding-house masters and others, the new organization grew very slowly, but in spite of this fact it did a remarkable work, due

largely to the efforts of its leader, Roney, an Irishman of considerable enthusiasm and zeal, who is considered by some to have been one of the ablest men ever connected with the labor movement on the coast. However, this association, for various reasons which we will not enter into here, met for the last time on November 4, 1882.

Wages of the seamen continued to fall, and by 1885 they had reached the bottom figure of twenty-five dollars for coasting sailors and twenty dollars for deep-water men. In May of 1885 agitation was started by a few leaders among the sailors to go on strike for better wages. This agitation resulted in a goodly number of men leaving their vessels and the strike became pretty general; very general, indeed, for a craft that was unorganized. A meeting was called on March 6 and "The Coast Seamen's Union of the Pacific Coast" was formed. The organization grew rapidly, and by March 23d it is said to have had 1,000 members. The strike continued for some time after organization and finally resulted in a number of the shipowners paying the thirty dollars per month asked by the sailors. Thus it was, that the first permanent organization was formed among the sailors of the coast. Among certain classes of maritime workers, such as firemen and engineers, permanent organization had been effected before this date, but the formation of "The Coast Seamen's Union," now "The Sailors' Union of the Pacific," on March 6, 1885, marks the transition from individual to collective bargaining and from a personally bartered wage to a uniform wage scale agreement between the sailors and the shipowners of the Pacific Coast. The above date is also significant in this connection, as marking the beginning of organization among the shipowners of the coast.

Further than this brief review of the early situation, this discussion of the wage scale agreements of the seamen's union need not extend back of the above date, and will, in fact, be most concerned with the period from 1901, at which time the first step toward formal recognition of the unions took place. In May of that year the Pacific Coast Steamship Company entered into an agreement with the Sailors' Union of the Pacific. This was the first agreement signed between the sailors and the shipowners of the Pacific Coast.

Of course, it must not be understood that the sailors and other

maritime workers of the coast had nothing to say in regard to wages, hours, and the like, until they were able to obtain signed agreements from the shipowners. As a matter of fact, they had considerable control in some of these and other respects pertaining to their craft prior to that date, as is evidenced by the local press of the time. Although it is very probable that they did not have anything like complete control of wages, hours, and working conditions, or even as large a degree of control as the articles of their own journal at that time would lead one to believe. These articles, of course, must be taken as partisan.

Those features embraced in the economic phase of the seamen's condition which bore with greatest severity upon the classes affected, and which constituted the chief, or at least the most immediate motive of organization among the classes, may be described in general terms as the features of the crimping system; that is to say, they included the method of shipment and discharge and the distribution of wages actually earned.

Before the Sailors' Union of the Pacific was organized, as has already been noted, the nominal rate of coastwise sailor's wages was low, being at times twenty dollars per month, as compared with the present rate of forty-five and fifty dollars. The foregoing statement, of course, does not hold good during the period of the gold rush, at which time, as has already been pointed out, common sailors received as high as $200 and $300 per month. However, this temporary and abnormal state of affairs does not concern us in this connection. To be sure, every possible effort was made to increase the rate of wages, but inasmuch as under the crimping system then in vogue, the sailor's wages were absolutely controlled by the crimps, being quite commonly paid to and disbursed by the latter, the rate of wages was a matter of secondary importance to the sailor himself. Naturally the first efforts of the union were directed toward securing control of the wages actually earned, by the establishment of a system of direct payment to the sailor, regardless of all claims, real and alleged, made upon them by the crimper. This step involved the abolition of the existing system of shipment, under which the crimps controlled the avenues of employment to such an extent that no man could get work except upon their terms, the prime condition of which was that the sailor should put up at one or the other of certain boarding-houses, which in turn implied

the surrender of all earnings to the boarding-house keeper. Working conditions, hours, food, living quarters, etc., on board ship were bad in all respects, but as these features were very largely the corollaries of the system of shipment and discharge, they could not be improved except through improvement in the latter regard.

Inasmuch as the seaman's wages depended upon his control of the shipping, that is, the seamen's opportunities of employment, it was natural that the sailors' union, in its efforts to place the control of wages in the seamen's own hands, should seek this end by means analogous to those in vogue. Accordingly, one of the first steps taken by the union was the establishment of a shipping office. The union elected its own shipping master and offered every facility for the transaction of business between the seamen and shipowner, without cost to either party or interference of any kind from any species of middlemen. After a brief experience the shipping office was abandoned as a failure. The incidental causes of this result were numerous, but, irrespective of all minor causes, it may be attributed to the fact that the shipowners refused it their support. In other words, the shipowners continued to employ their crews through the crimps, being actuated in this course by the dual motive of hostility to organization among the seamen and a desire to perpetuate existing conditions as to wages and the like. Thus, in the struggle for the control of the engagement of seamen the crimps were favored.

Meanwhile the sailors' union had engaged in several strikes, the outcome of which afforded no material or permanent change in the prevailing conditions. However, except in a few instances of extreme depression, the unions continued to retain control of the men engaged in the respective crafts, although they were usually in these exceptional circumstances forced to give way in the demand for the maintenance of the stipulated rate of wages. When confronted with necessity of waiving recognition of the wage schedule, the unions endeavored to restrain their members from seeking employment indiscriminately—that is, from bidding against each other. The effect of this course was to prevent wages from falling as low as they inevitably must have gone in the absence of such checks. On the whole, it may be said that at no time since 1885 have seamen's wages fallen to the industrial depression rates prior to that date.

The severe nature of the seamen's struggle to gain control over the avenues of employment and the small uncertain measure of success attained during the decade 1885-1895, was due principally to the state of law under which the seamen lived. The features of the law which bore most heavily in restraint of the seamen's liberty may be summed up under the following heads: (*a*) imprisonment for desertion; (*b*) allotment to original creditor; (*c*) attachment of clothing. The import and effects of the statutes concerning these points may be stated briefly as follows: The law of imprisonment for desertion provided that a seaman, who having signed articles for a specified voyage left, namely, deserted, the vessel before the expiry of his contract should be subject to arrest and imprisonment for three months. In the case of a seaman engaging for a foreign voyage, the signing of the articles was mandatory; in the coastwise trade it was optional with the seamen to sign articles. Theoretically, the latter feature of the law enabled the coastwise man to preserve the right of personal liberty, that is, the right to leave his vessel in any safe port.

Practically, however, this right was denied the seamen by the simple fact of agreement among the shipowners to request that all crews should sign articles. Thus the seaman was confronted with the alternative of signing articles, thereby surrendering his right to leave his ship at any time during the voyage, or remaining idle. Of course, the seaman's necessity forced him to accept the former of these conditions. Having thus subjected himself to the penalty of imprisonment for desertion, the seaman was forced to submit to whatever exactions might be imposed upon him. The ordinary course of the land worker when conditions became unbearable, namely, the strike, meant arrest and imprisonment either during the period specified by law or until the vessel was ready for sea, in which latter case, the deserter was placed on board by the port authorities and forced to return to work. This part of the law was indeed very objectionable.

Allotment to original creditor was designed as a convenience to the seaman, enabling him, if he so desired, to allot a certain part of the wages to be earned during a voyage to an original creditor in payment of any just debts for board, lodging, or clothing. In practice, however, allotment to original creditor is everywhere recognized as the chief support of the crimping system. In every day

operations of the allotment system the "original creditor" is commonly the crimp, while the "just debt" for board, lodging and the like is mainly a levy upon the seamen in payment of shipping fees and other illegal charges. Attaching the seaman's clothing was the final resort of the crimps. If, as sometimes happened, a seaman refused to agree to the terms of shipment, allotment, etc., his clothing was attached.

The organized seamen recognized their helplessness under these conditions and determined upon an effort to change the maritime law, particularly in the respects here noted. In 1892 the Sailors' Union of the Pacific elected a legislative committee which, with the aid of necessary legal counsel, drafted a bill for the repeal of the obnoxious features of the then existing law. This bill, which was introduced into Congress by Representative Magurie, of the Fourth Congressional District of California, became a law in 1895. The measure abolished imprisonment for desertion in the coastwise trade and in the trade between ports of the United States and Canada, Mexico, Newfoundland, Bahamas, Bermudas and West Indies. It also prohibited allotment to original creditor by seamen in the coastwise trade and made illegal the attachment of seamen's clothing.

The enactment of this measure effected a revolution in the legal status of the seamen, while its effect upon the economic conditions of the latter was hardly less remarkable, if not in actual, at least in potential results. The practical results of the law were immediately apparent in the greater independence of the seamen and a proportionate decrease in the power of the crimps. In the Magurie act the abolition of imprisonment for desertion applied only to seamen engaged in the coastwise voyages. This defect in the Magurie act was afterward remedied by the passage in 1898 of the White act.

Any discussion of the wage scale agreements of the seamen's unions that did not take into consideration the shipowners' side of the question, would obviously be partisan and incomplete. It will not be possible or profitable, however, in this discussion to attempt to give the history of the various shipowners' associations that have existed, but rather to confine our observations to the one which has particularly to do with the subject in hand, namely, the Shipowners' Association of the Pacific Coast. It has been between this association and the maritime unions of the coast that most of

the wage scale agreements with which we are concerned have existed. This association is the leader and may be taken as typical of all the others. The organization, as the name indicates, is composed of shipowners, about forty-five in number, actually holding membership certificates, while about twenty others outside the organization abide for the most part by the rulings made and agreed upon between the association and the unions. The association has its headquarters in the Ferry Post Office Building in San Francisco, with branch agencies at San Pedro, Eureka, Astoria, and Aberdeen. "Any firm, corporation, or individual owning or controlling, or acting as managing owner or agent of any sea-going vessel may become a member of this association by being elected to membership by a majority vote of the board of directors, and signing his or their name hereto and agreeing to comply with all rules and regulations of this organization."

"Each and every member of this association shall be required upon joining to agree to act with the other members in all matters that may be adopted by the members or directors of said association, and there shall then be issued a membership certificate signed by the secretary and president and under the seal of the association." As a matter of fact the association has had considerable trouble as an organization to get all members to act together in the case of a fight or strike with the maritime unions. The reasons for this are obvious. The strike always occurs when conditions in the shipping industry are prosperous. That is, the sailors always ask for an increase in wages when conditions in the shipping industry will justify their receiving the increase asked for. Such being the case, it is always a temptation to members of the association to break away from the other members and grant the increase in wages demanded by the sailors or other maritime workers, in order that they may avail themselves of the high rates they are able to secure during such times. In the present association, according to one in close touch with all of its members, when rates are high and the sailors or other maritime workers walk out and tie up their vessels, it is almost impossible to hold the members of the association together and put up a strong and continuous fight of any duration.

It should be mentioned just in this connection, however, that the attitude of the shipowners' association has been and is, "mil-

lions for defense but not a cent for tribute." That is, the association, as such, has as a rule, preferred to fight the unions and spend thousands of dollars, if need be, rather than consent to an increase in the wage schedule. This is the case as stated by one of their representatives and is not the union's side of the story. They spent about $30,000 in the strike of 1906, rather than increase the wages of the sailors and other maritime workers, which they could have done on half or a third the amount spent fighting. The defense fund of the associaton is raised, for the most part, by the assessment of its members at the time money is needed. Of course, in a wealthy organization of this kind plenty of money can be raised on short notice by assessment without there being any particular provision for it in their by-laws.

The provision for a grievance committee should be noted in concluding this brief discussion of the association. The following is quoted from the association's by-laws: "Grievance Committee: It shall be the duty of the Grievance Committee to settle all matters of dispute as to agreements and customs with the unions and organizations with which the association has dealings. This committee shall be composed of members who are interested in both sail and steam vessels."

As has already been pointed out, the first formal recognition of the seamen's union by the shipowners was in 1901, when an agreement was entered into between the Sailors' Union of the Pacific and the Pacific Coast Marine Firemen's Union, on the one hand, and the Pacific Coast Steamship Company, the principal line in the coastwise passenger service. This agreement provided for the full recognition of the unions—that is, it provided for the employment of members of the union exclusively, so far as the latter were able to supply the labor needed on the company's vessels. In all other respects the agreement was satisfactory to the parties concerned. However, within a short time after the conclusion of these terms a great strike occurred, involving all the maritime organizations in San Francisco. Under the guidance of the City Front Federation, a body of delegates representing all organizations, both maritime and longshore, connected directly with the shipping industry of the port, the sailors, firemen, cooks and stewards went on a strike in August, 1901, in support of the local branch of the Brotherhood of Teamsters.

Although the teamsters alone were directly affected at the outset, experience in a number of similar crises led the organizations affiliated with that craft to apprehend a general attack upon themselves should the movement against the former prove successful. Accordingly, the maritime organizations, in common with the other bodies represented in the City Front Federation, quit work on all vessels. The Pacific Coast Steamship Company declared this action to be a violation of the agreement between it and the two unions. The strike was called off at the end of nine weeks by the formal action of Governor Henry T. Gage, acting by authorization of the City Front Federation and the Employers' Association. The Pacific Coast Steamship Company thereafter refused to recognize the agreement as in any way binding upon it. On the contrary, the company brought suit against the unions of sailors and firemen for damages in the sum of $20,000 in each case, claiming damages to that amount as a result of the "tie-up" of its vessels during the strike. These suits were not brought to trial, but were withdrawn upon the resumption of mutually satisfactory relations.

In 1902 an agreement was entered into between the Sailors' Union of the Pacific and the Shipowners' Association of the Pacific Coast, an organization at that time representing the owners of sailing vessels. This agreement has been renewed periodically since the date of its first expiration and is virtually still in force. In 1903 an agreement was entered into between the Sailors' Union of the Pacific, Pacific Coast Marine Firemen's Union and the Marine Cooks and Stewards' Association of the Pacific, on the one hand and the Steam Schooners Managers' Association, representing all the large owners of steam and freight vessels. This agreement has also been renewed at regular intervals.

In 1903 an agreement was entered into between the Sailors' Union of the Pacific, the Pacific Coast Marine Firemen's Union and the Marine Cooks and Stewards' Association of the Pacific, on the one hand, and the Oceanic Steamship Company, owner of passenger and mail line between San Francisco and Australasian ports. It has also been renewed.

These agreements represent the first formal recognition of the maritime unions by the shipowners of the Pacific Coast; nevertheless, they do not, by any means, represent the first recognition of the unions by the shipowners in an informal manner, as is evidenced

by many former acquiescences. On numerous occasions prior to the date of the first signed agreement the representatives of the unions had been recognized by the shipowners in interviews, and the demands of the former were frequently granted. There have never been any regular conferences between the maritime unions and the shipowners, but matters requiring the attention of the representatives of both sides have usually been settled in irregular negotiations at such times as they have come up for settlement, which have been rather frequent.

While the unions and owners have no provisions for regular joint conferences, they meet together and thrash out their difficulties in an informal, effective, and so far, satisfactory way.

In the earliest agreements between the seamen and the shipowners no provisions are made for settling grievances or renewing agreements. In the agreement between the Sailors' Union of the Pacific and the Shipowners' Association of the Pacific Coast, on April 3, 1902, we find the first provision for a grievance committee. The section is as follows: "A standing committee of three from each association to be appointed to adjust grievances that may arise from time to time."

In an agreement with the Oceanic Steamship Company, on August 6, 1903, we find the following: "It is understood that when any unusual work arises in isolated cases, not covered by this agreement, the men, when called upon, shall perform such labor, and the compensation therefor shall be determined and adjusted between the officers of the union and the company, and in the event of any disagreement, shall be arbitrated as hereinafter provided for the arbitration of differences, controversies, and grievances.

"All items not mentioned in this agreement or the schedule herein, shall be performed and the payment shall be made for work done under this agreement in accordance with the usual custom heretofore prevailing.

"In the event of any controversy arising between the unions and the company, or in the event of any of the unions having any grievances, the men shall continue to work, and all such grievances and controversies shall be settled, if possible, by representatives of the company and representatives of the union. If such grievances and controversies cannot be settled, then they shall be arbitrated by choosing a third disinterested man, upon whom a

representative of the unions and a representative of the company shall agree, and the decision of any two shall be final. If the representative of the unions and the representative of the company cannot agree upon a third man, then each side shall choose a disinterested man, and said three men shall constitute a board of arbitration, and a decision of a majority of the said three shall be final, and all parties shall abide thereby." The board must meet within two days after grievance arises.

In an agreement between the unions and the Steam Schooners Managers' Association of April 27, 1903, the following provision is made for a permanent standing grievance committee: "A standing grievance committee of six shall be appointed, one from the Sailors' Union of the Pacific, one from the Pacific Coast Marine Firemen's Union, one from the Marine Cooks and Stewards' Association of the Pacific and three from the Steam Schooners Managers' Association, vessels not to be tied up pending settlement of controversy." This last case is the earliest instance of a provision providing for a permanent standing grievance committee. In most instances the grievance committee is convened for each case.

The following extracts taken from agreements are typical. The eighth article of the Pacific Steamship Company agreement, May 15, 1901, runs as follows: "Outside of the port of San Francisco, nine hours to be considered a day's work, the time to be averaged at the rate of six days to the week. Any work over that to be considered as overtime. Two hours will be allowed on Sundays and holidays. Any more work to be considered as overtime."

An agreement with the Oregon Coal and Navigation Company reads, in part, as follows: "Outside the port of San Francisco. After passing the outer buoy going into Coo's Bay and while in there, nine hours to constitute a day's work, the time to be averaged, but for the first forty-eight hours (two days) only. Any work over that to be considered as overtime. Two hours' work to be allowed on Sundays and holidays; any more work to be considered as overtime. Work done at Port Oxford either going or returning, shall be counted in the regular sea duties and not considered in the hours of labor." In the first agreement it will be noted that nine hours are to be considered a day's work, "the time to be averaged at the rate of six days per week. Any over that to be considered as overtime." In the second agreement, "nine hours to constitute a

day's work, the time to be averaged, *but for the first forty-eight hours (two days) only.* Any work over that to be considered as overtime. The advantage of the revised wording to the seamen is obvious.

In this connection it would be well to look over an early agreement noticing in particular the wage schedule. The following is taken from an agreement with the Shipowners' Association, April 3, 1902:

"Sailing vessels trading to outside ports, per month, $45; overtime 50 cents per hour. Sailing vessels trading to inside ports and bar harbors, in the States of California, Oregon and Washington, British Columbia and Alaska: wages per month, $40; overtime 40 cents per hour. Sailing vessels trading direct to Marshall, Caroline, Ladrone, Gilbert, and Philippine Islands, Siberia, and Central America, per month, $30. Sailing vessels trading direct to South America, China, Japan, Australia, Africa, New Zealand, and New Caledonian Islands, $25. Vessels chartered in one port of the United States to load in another port of the Pacific Coast of the United States and British Columbia for offshore points, wages to be the same as on the coast until the vessel is loaded and cleared, viz., $40 per month."

From the above it will be noticed that the wages vary from $25 to $40 per month, depending on the length of the voyage, location of terminals, and the like. The detailed and minute provisions for territorial variation should also be noticed. In the same agreement (April, 1902), we find this article: "No demand to be made for a lump sum rate of wages for any single voyage, and crews to be employed in loading and discharging coasting vessels either by themselves, or along with stevedore's gang or longshoremen. If, however, vessel is to be detained over seven days waiting for a berth, owner to have the right of paying off the crew." The ninth article of this agreement reads as follows: "In all cases where a vessel is bound for Puget Sound or British Columbia, to Australia, Africa, or West Coast, and proceeds from there direct, or via some other loading port to the Hawaiian Islands for discharge, the wages of the crew shall remain the same as stipulated in the articles until the vessel's arrival back to Puget Sound. If, however, the vessel discharges in the Hawaiian Islands and loads cargo for San Francisco, the crew shall then receive the rate of wages ruling

between the Hawaiian Islands and San Francisco." This last is a good example of provisions for different wages in different waters and different trips, or, in other words, territorial variation. The following is that part of the agreement pertaining to wages, which was entered into with the Shipowners' Association, October 21, 1902:

"If the crew is not furnished within forty-eight hours after written notice has been given to the union agent by the master, owner, or agent, the master, owner, or agent, may get crew elsewhere. Fares to be paid by vessel and wages to begin when men come on board." "Nine hours to constitute a day's work in all bar harbors and inside ports of the Pacific Coast to the north of San Francisco and all ports south of San Francisco and the Hawaiian Islands. Provided, that in the Hawaiian Islands and the South Sea Islands, laying in open ports, the working hours may be varied so as to begin not earlier than six a. m., and not later than seven p. m., but that in no case, unless overtime is paid, shall working hours exceed nine hours per day. Coffee time to be limited to ten minutes." "No demand to be made for a lump sum of wages for a single voyage, and crews to sign for the round trip, to be employed in the loading and discharging coasting vesels either by themselves, or along with stevedore's gangs or longshoremen. Whenever a crew is signed from a coast port to San Francisco and return, and vessel's destination is changed or vessel is laid up waiting for a berth, the master may pay the crew off at any time, but shall pay in addition to wages then earned, the fare back to port of shipment in money, unless crew shall agree to sign over for a new voyage." It should be noted in the last article just quoted that there is a change in provision stating explicitly that the fare shall be paid "back to port of shipment *in money* unless crew shall agree to sign over for a new voyage." This is a distinct advantage for the seaman over a similar agreement signed in April, 1902, quoted above.

This discussion would be incomplete, possibly misleading, without a final word relating to the present. The relations existing between the employers and the employees in the shipping industry, are just now, it seems, in a transitory stage. There is a tendency at present on the part of the shipowners, without any serious objections from the unions, to abandon the signed agreement which has

prevailed hitherto, and substitute for it what they style a "Tacit Agreement," which is about the same as the former signed agreement without the signature of the shipowners and the unions. At the present time the shipowners' association is under signed agreement with only one of the maritime unions of the coast, viz., the marine engineers. All the other agreements with the other organizations have either expired and have not been renewed, or have been abrogated by the association. The essential reasons for the association's action in the matter, as stated by their representative, may be summed up as follows: First, a signed agreement with a union means nothing because the union is not incorporated and hence not responsible. Secondly, the signed agreement has to be renewed periodically and the date of renewal is always preceded by numerous demands from the unions which if not granted, lead to a fight and "tie up." The shipowners contend that the signed agreement with the unions is of no value unless backed up by good faith, and that the good faith can be had just as well without the signed agreement and thus eliminate the objectionable features that go with it.

The unions have no serious objections to doing away with the signed agreement, because, in the first place, they have a practical monopoly of the supply of labor of the shipping industry and are so well organized as to control completely the men in the various branches of the industry. It is to be noted that most of the men who go to sea are foreigners coming for the most part from the northern countries of Europe direct to New York, the number reaching San Francisco by way of the Horn being comparatively small. The majority of those on the coast come across the continent, with the result that there is no surplus from which the shipowners can recruit their forces in the case of a strike, and a virtual monopoly of the supply of labor is enjoyed by the maritime unions of the Pacific Coast. The same fact that makes this possible, however, on the Pacific Coast prevents it on the Atlantic. The large number of immigrants constantly landing in New York and other ports of the Atlantic Coast makes it practically impossible for the unions to get control of the available labor force that can be employed on ships. The large number of immigrants constantly arriving from Northern Europe enable shipowners to obtain crews with ease at all times.

On the coast the only man who comes in contact with the seamen is the ship's delegate, who is a representative of the union. Whenever an order is turned into the shipowners' office for a man or a number of men, the order is handed to the delegate and he secures the men. In this way the delegate is the only man with whom the sailors come in contact and they naturally look upon him, a representative of the unions, as the chief factor in their employment. This condition of affairs, the owners claim, makes the seamen hold allegiance to the unions first and service to the shipowners second. For this reason they would like to dispense with the ship's delegate, but so far they have been unable to do so. To eliminate the delegate would necessitate a complete change of the system of securing crews as it exists at the present time, and, besides, the unions would not consent to it.

Under the new plan, since the signed agreement has been eliminated, the representatives of the unions and the representatives of the shipowners meet together and talk the situation over and decide on such terms as are mutually satisfactory. The shipowners then embody these terms in the form of a tacit agreement and issue them as their rules governing men in their employ. The unions do likewise, except that they issue them as their working rules governing the employment of members of the unions. This is a peculiar evolution of the wage scale agreement, but encouraging, inasmuch as it adheres to collective bargaining.

THE ANTHRACITE BOARD OF CONCILIATION

By Hon. T. D. Nicholls,
Member of Congress from Pennsylvania.

The Board of Conciliation for the adjustment of difficulties or disagreements arising between the employers and employees in the anthracite industry was established by the award of the Anthracite Coal Strike Commission appointed by President Roosevelt to decide the questions in controversy between the operators and mine workers in the strike of 1902. This award was based upon the demand of the miners for "satisfactory methods for the adjustment of grievances which may arise from time to time, to the end that strikes and lockouts may be unnecessary." The authority of this board is confined strictly to the settlement of questions "arising under this award." The commission doubtless found justification for an arbitration board in other trade agreements.

For many years prior to the award of the Anthracite Coal Strike Commission, no definite agreement covering wages, prices and other conditions of employment existed between the miners and operators. All employment was upon an individual basis. With rare exceptions, no definite wage schedule was maintained at the collieries, to which miners or operators could refer for a settlement of disputes as to what wages should be paid in certain cases. The workmen complained that the absence of a written or printed schedule of wages, prices and standards enabled the employers to reduce wages and increase the size of the car or ton.

The employers also claimed the right to pay various wages to those employed to do the same kind of work; sometimes employing new men for less than was paid those whose places they filled. This method would finally result in a general reduction of wages, and caused the demand for a minimum wage for each occupation; the employer to be allowed to pay as much more as he pleased in such individual cases as he deemed worthy. Many disagreements and strikes resulted because of the lack of a definite wage agreement between employers and employed. Security of standard

wages is very much appreciated by workmen generally, but liability to sudden reduction is the cause of suspicion and irritation. Contentment is engendered by security, and discontent by insecurity.

In some of the exceptional cases mentioned, definite wage and price schedules were adopted by agreement and printed for general use by the miners and operators. Very little friction has occurred in the relation of employer and employees over the questions definitely covered by said schedules, except where general demands for improved conditions have been made, as in the strike of 1900 and of 1902.

In addition to the question of wages, and prices for piece work, there were other matters which from time to time caused friction. The dockage system, under which an employee of the company judged the cars of coal as they came to the breaker to be dumped, and deducted from the price to be paid the miner, such portion of the whole as he cared to fix as a penalty for light loading or for impurities in the coal, was a continual source of irritation. There were charges that it was used as a more or less uniform method of reducing wages, and that docking-bosses were employed for that purpose. The system was undoubtedly abused in many places, and in those cases instead of causing miners to be more careful in loading clean coal, discouraged them and caused them to allow the crime to fit the uniform punishment. I was informed personally by a fellow miner, that having been docked unreasonably for some time, he became desperate and ordered his laborer to load up the refuse, which he had thrown aside, until the car was nearly full and cover it over with good coal. He expected to be charged with the matter and haled before the manager, but no notice was taken of the car by the docking-boss, the docking being as usual; proving that no real attention was paid to the condition of the cars and that the docking was uniform. The manager coming into his working place later on and asking where the refuse had been placed, was informed of the facts in the case. Instead of discharging the miner, he caused the docking-boss to be discharged for allowing a carload of refuse to pass unnoticed.

Trouble occurred at times over the question of whether or not a regular time for the noonday meal should be allowed the day wage men and boys employed in moving the cars throughout the mines,

the officials claiming that work should not cease while there were cars on hand to use, and the employees claiming that the chance to eat dinner was too uncertain and irregular. In the absence of a detailed agreement many other matters were the source of unrest and dissatisfaction.

A question that has caused considerable agitation for many years is the demand of the miners that wherever practicable coal should be weighed in the mine car and the miner paid by weight. This demand was reiterated in 1900 and again in 1902. In 1875 the state legislature passed a law providing that coal should be weighed and the miner paid by the pound, provided that no other method was mutually agreed upon by the miners and operators. This law has never had any effect, being entirely ignored and lost sight of, until its existence was discovered and brought to the attention of the Coal Strike Commission. The operators claiming that the proviso exempted them from paying by weight, inasmuch as miners continued to accept employment and payment by the car for coal mined. The argument made by the miners for the abolition of the car system was that they were expected to so load the car at the working place in the mine that it would have a minimum of six inches of coal built up above the top of the car by the time it reached the breaker, in some cases miles away from the working place. They claimed that with the jolting and settling of coal during its passage over the mine roads it was impossible to guarantee any particular condition when the car reached its destination. They also argued that in the endeavor to make sure that the car would have the required height of "topping" when it reached the breaker, they would very often heap on more than a sufficiency, but received no extra payment for the surplus. Then again, under the system of dockage for light loading, they were docked generally a minimum of a quarter of a car, although the topping may have been only one or two inches less than the required six inches. The demand for payment by weight was based upon the proposition that each miner would receive payment for the exact weight of coal in the car, and that this would do away with the unreasonable requirements as to topping, together with the dockage for light loading. Under the car system, miners working a short distance from the surface could load their cars very little over the height of topping required, and the car would reach the breaker in good condition. Those who

worked far away from the surface would have to load their cars with considerably more coal on the top, in order to allow for settlement while the car traveled from the working place to the breaker. The inequality is clearly shown, in that one miner would have to load more coal for the price paid per car than another, and yet be more liable to dockage for light loading.

The price of powder was also the subject of a long-continued agitation. The price usually charged for a twenty-five pound keg of black powder was three dollars. In the early eighties a reduction of twenty-five cents per keg was allowed, leaving the price at two dollars and seventy-five cents. The miners claimed that this powder could be bought in the open market for a little over one dollar per keg, and complained that they were compelled to purchase it from the coal companies at $2.75.

For a number of years the miners had expressed a desire that their wages be paid semi-monthly instead of once a month, as was the rule of the region, with some exceptions in later years. The state legislature had endeavored to bring this about by legislation, but until 1901 the monthly pay continued to be the rule.

Organization

Realizing their utter helplessness in fixing wages for themselves by individual action, the anthracite miners have from time to time organized unions and united in making demands for certain wages and prices, and for the privilege of having representatives of the whole body negotiate with the employers as to the conditions of employment. These demands for collective agreements were generally opposed by the employers, and the disagreements often resulted in strikes. These movements did not always cover the whole anthracite region and while the miners of one section would strike the other sections might remain in operation. These sectional strikes were failures in most cases, and the necessity for a more general organization, including as members, the miners of the whole region, became apparent.

In 1900 the United Mine Workers of America made its first attempt to inaugurate a general demand for a wage agreement between the miners and operators of the whole region. Many miners would not join the new movement because of repeated failures of former unions, claiming that sectional struggles would again

bring disaster. Finding that they were unsuccessful in bringing the miners of the whole region into the union without a definite policy, the members in convention decided to make general and specific demands upon the operators for improved conditions. After this action, when it seemed that the demands would be insisted upon, a greater interest was taken in the new union, and many joined its ranks, thousands of them immediately preceding the day the strike was inaugurated. There were, however, only about eight thousand who had been members long enough to be reported to the national office. This strike lasted six weeks and was settled by the acceptance of notices posted by the operators of a ten per cent advance in the day wages and a reduction in the price of powder from $2.75 per keg to $1.50 per keg, considered seven and one-half per cent, accompanied by an advance of two and one-half per cent in the mining price.

The strike of 1900 settled the powder question, and in 1901 the semi-monthly pay day was instituted. The other matters were, however, left as they were, save for the general advance in wages. The operators had refused to recognize the miners' organization, and no agreement or wage scale was negotiated. In 1902, after a failure to agree upon a wage scale another strike ensued, lasting over five months and involving the whole region. The demands were similar to those of 1900 in that a definite and detailed wage agreement was requested. As before, the operators refused to recognize the miners' union and make an agreement with its representatives. This strike was finally ended by the appointment of the Anthracite Coal Strike Commission, with authority to settle the questions at issue.

Difficulties of the Board

The Board of Conciliation was instituted as a court for the interpretation of the award of the Anthracite Coal Strike Commission, or, in other words, to interpret an agreement between the miners and operators, for both agreed to abide by its terms. By the very limitations of the case, I judge, the commission was unable to see its way clear to go into the details of the matter and establish minimum wage rates for each occupation and fixed prices for piece work. Therefore, the award was only general as it covered these matters. It simply provides for those employed for

daily wages, "that from and after April 1, 1903, and during the life of this award, they shall be paid on the basis of a nine-hour day, receiving therefor the same wages as were paid in April, 1902, for a ten-hour day.

"And that an increase of ten per cent over and above the rates paid in the month of April, 1902, be paid to all contract miners for cutting coal, yardage, and any other work for which standard rates or allowances existed at that time, from and after November 1, 1902, and during the life of this award."

Now, while the authority of the board is limited to the interpretation and application of these general awards as they cover wages and prices, the cases which come before it concern actual concrete wages and prices. The question is: what were the wages and prices paid in April, 1902? The fact that there was no agreement or definite schedule of wages and prices in existence in 1902 which could be referred to for evidence, has been the source of many complaints, and has made the work of the board very difficult. Proof might be presented showing that a certain price was paid per car, but the size of the car left uncertain; the pay statements not showing the cubic contents of the car. Again, in a dispute concerning the size of new cars in use at a certain mine, there would not be found any document recognized by employer and employee as an authority upon the standard size of the cars in use. In one case where a new and larger car was introduced, a disagreement as to the price to be paid was brought before the board for adjustment. No standard could be ascertained from the evidence presented, as there were two sizes in use previous to the introduction of the new car. These cars were both being loaded for the same price. The case was disposed of by averaging the sizes of both old cars on the basis of their proportionate numbers, thus forming a new basis for the consideration of the relative increase in size and price of the new car.

A disagreement as to the wages being brought before the board, the operator might show that he had been paying various rates of wages for the same work in April, 1902, and therefore claim the right to pay either rate to the complainant, whether lowest or highest. Disputes as to prices paid for cutting rock, brought forth satisfactory proof as to the price paid in 1902, but left the thickness of the rock and consequent amount of labor

expended, a matter of uncertainty. The testimony of miners and operators was often in flat contradiction, and as oral testimony was very often the only kind of evidence, it made an exact disposition of such cases most difficult. These difficulties were, however, inherent in the matter because all proofs hark back to April, 1902, and not even then to a definite existing instrument.

The board has had some serious disagreements, but because both sides felt the responsibility of carrying out the main agreement, these difficulties were passed over safely. A number of cases were disagreed upon by an evenly divided board and referred for settlement to an umpire, as provided for in the award of the commission.

In my opinion, a general wage scale prescribing uniform minimum wages for equal occupations, hours of labor, and general methods in all matters of a general character, and providing that these general provisions should be incorporated in each local schedule, together with local mining prices and necessary regulations, would reduce to a minimum the number of cases referred to the Board of Conciliation. I base this opinion on similar conditions coming under my personal observation.

Notwithstanding the many difficulties which hamper the work of the Board of Conciliation, I believe it has justified the purpose of its existence. I do not contend that it has given complete satisfaction, for I have pointed out the inherent uncertainties as to facts in numerous kinds of cases brought before it for adjudication which would render perfection impossible. The board was established for the purpose of adjusting difficulties without recourse to strikes and lockouts. With few exceptions this has been the result. It has given stability to the agreement between miners and operators and continuous employment during its terms. The personal contact of the representatives of the operators and miners as members of the board has been beneficial to both interests and the public; for rough edges are smoothed, and unreasonable prejudice is dissipated by personal contact.

THE WORK OF EMPLOYERS' ASSOCIATIONS IN THE SETTLEMENT OF LABOR DISPUTES

By James W. Van Cleave,
Chairman of the National Council for Industrial Defense, and Former President of the National Association of Manufacturers.[1]

When the Board of Editors of The Annals of the American Academy of Political and Social Science asked me to write a paper for them on "The Work of Employers' Associations in the Settlement of Labor Disputes," I felt honored. I have been familiar with the Academy's publications for years. Their contributors are men who speak with authority on the subjects which they touch. Everything which carries the Academy's imprint is studied all over the country by investigators and thinkers in the broad field which it covers.

As an employer for many years, as president of the National Association of Manufacturers for three terms, and as chairman of the National Council for Industrial Defense ever since its formation in 1907, consisting of 228 national, state and local organizations of business men, nearly all the members of which are employers, I naturally have had a good deal of interest in the question which I have been asked to treat. As all of us see, from the great number of labor disturbances of one sort and another in 1910, this question is becoming more and more an issue of grave national concern.

In discussing the question which is the subject of this paper it will be necessary to examine it on all sides, and particularly to avoid making the mistake of supposing that all the blame for labor disputes belongs to the workers. Let me quote here a few expressions from an address which I delivered at the annual convention of the Citizens' Industrial Association of America, held in Chicago, in December, 1906:

"As an advocate of fair play for everybody I will say a few words to-day to my fellow employers on our duty to give a square deal to our employees. We see socialists, anarchists and extremists

[1]This article was written by Mr. Van Cleave just before his untimely death. It represents his last work. In him the Academy lost a loyal friend and a frequent contributor to its publications.—(Editor.)

of all sorts springing up in large numbers all around us. Let us question ourselves and learn whether or not we have had any part in generating these destructionists.

"As we all know, there are autocratic and oppressive employers. Judging by many of their acts they seem to believe that the relations between capital and labor are like those between belligerents in war. . . . With them every sort of aggression which they can perpetuate without coming into collision with the statutes is fair. These employers seem to think that they are justified in taking every advantage which offers itself over their employees, and also over the public.

"Of course this class of employers is far in minority. It is numerous enough, however, to reflect discredit and to inflict injury on the entire guild of employers. It is the one oppressive employer out of the one hundred who generates the wrath of the demagogues and their dupes. . . . This one sinner, therefore, becomes more of an enemy to the rest of the members of his order than he does to the element which he arouses into irruption.

"In several ways the labor unions have done good service to the workers. They have promoted a fraternal feeling and cultivated a spirit of mutual helpfulness between men in many sorts of occupations. They have aided in advancing the wages of workers, and thus have obtained for labor a large share of the profits which the cooperation of labor and capital have brought. As fair-minded men we must concede all this. I, for one, have no desire to take away any of the credit belonging to the labor unions for any of the good which any of them have done."

Holding these views, and believing that workers have as good a right as employers to organize, I welcomed combination among workers because of the opportunity for collective bargaining which it would offer. Manifestly it is easier for an employer to make a contract with a thousand workers in a body than it would be to do this with each of them separately. I think a large majority of employers hold this view.

But here a drawback enters: We must devise a way by which the unions shall be compelled to respect their contracts. They should be legally responsible so that the law can reach them when they break faith with their employers, just as the employers are punishable by law when they violate their agreements.

This untrustworthiness and irresponsibility in labor unionism is something of which I have had an embarrassing personal experience. A violation of contract by a portion of the employees of the Buck's Stove and Range Company, of Saint Louis, of which I am president, resulted in the boycott which the American Federation of Labor declared against us. Our company is an open shop. It employs men regardless of their membership or non-membership in labor societies.

A small number of our employees who belonged to a union wanted to work fewer hours than they had been working up to that time, and fewer than the rest of our employees were working. If we granted their request a corresponding reduction would have been rendered necessary in the hours of the remainder of our forces, who outnumbered the malcontents many times over. As this would have involved a curtailment of production which would have placed us at a great disadvantage as compared with our competitors in Saint Louis and all over the country, we refused their request. The matter was submitted to arbitration, but a general strike was declared by the local union before a final decision was made, thus violating a contract. A boycott was set up against our products, and the American Federation of Labor declared war upon us.

In defense of the principle that an agreement is binding for the term which it covers, unless it is changed by the free and amicable consent of all parties to it, we were compelled to strike back. We did this in a legal way. From the Supreme Court of the District of Columbia—the headquarters of the American Federation of Labor being in Washington—we obtained a temporary injunction, which was afterward made permanent, restraining the Federation from placing the name of our company on the "Unfair" list in that organization's publications. A sentence to various terms in prison was inflicted on certain officers of the Federation for disobeying the court's orders. On appeal the case of these offenders is now before the United States Supreme Court.

Thus my experience of the arbitrariness of some of the labor unions under their autocratic and anti-American leaders, and their disregard of pledges, give me an especial reason for urging the adoption of some means whereby the unions, as unions, may be made responsible for their acts. The experience of most of the other employers of labor on a large scale is like mine on this point. For

their own and the workers' interest employers should advocate the placing of full legal accountability upon labor unions, so that the duties and responsibilities, as between employers and workers, shall be reciprocal and equal. When this elemental demand of justice and fair play is met, employers will be able to exert much more influence in the adjustment of labor disputes than they have heretofore. As a class, employers are always glad to meet workers half way in settling disagreements regarding wages, hours of work and other conditions when the workers present their side in an amicable spirit, and when they give any assurance that their pledges will be kept in good faith. Industrial peace is to the interest of employer and employee alike.

In support of my assertion that, as a class, we desire to settle disputes with employees in a peaceable way, I will cite one of the planks of the "Declaration of Labor Principles," adopted by the National Association of Manufacturers in 1903.

"The National Association of Manufacturers disapproves absolutely of strikes and lockouts, and favors an equitable adjustment of all differences between employers and employees by any amicable method that will preserve the rights of both parties."

This is the creed of an organization of employers who represent more workers and more wealth than any other combination of men on the globe. Let the reader of these lines observe that the National Association of Manufacturers opposes lockouts by employers just as strongly as it does strikes by employees. To it the lockout is as objectionable as the strike. With this principle I have always been in hearty accord. I have been against strikes, lockouts and blacklists from the beginning of my days as an employer.

Manifestly the influence of the National Association of Manufacturers in the equitable adjustment of labor controversies has been far reaching. It has extended to thousands of employers outside of our organization. The same attitude is taken by most of the employers represented in the 228 organizations affiliated with us in the National Council for Industrial Defense. We have exerted our influence in a decidedly practical way. When the officers of the American Federation of Labor have, on several occasions, attempted to coax or coerce Congress into the enactment of laws which, in industrial disputes, would virtually have abolished the injunction and have legalized the boycott, representatives of our organizations

have appeared before Congressional Committees and in conference with Congressional leaders, and have given practical voice to the American hostility to class legislation of any sort. Thus the special favors which the labor union magnates asked from Congress were refused. Before state legislatures all over the country we have done similar work. Our influence was exerted in the same way in the Republican National Convention of 1908, where we defeated a plot by which the same elements attempted to commit that party and its Presidential candidate to the policy of licensing a favored order of law breakers in the community.

Thus we have aided in improving the relations between employers and workers, have assisted in protecting the non-union worker as well as the employer in the enjoyment of his rights, and, by example, have furnished to the intelligent and public-spirited members of the labor societies an incentive to curb the arrogance and rapacity of their leaders.

At the beginning of this article I quoted some expressions from an address which I made in Chicago in favor of peace between employers and workers. This necessity is greater in 1910 than it was in 1906. Business is more diversified and expanded now than it was then. Our manufacturers, to a steadily increasing degree, outrun home consumption. Coincidentally with the growing need of winning new foreign markets for our surplus products there comes a closer competition between us and the great industrial countries of Europe. For these and other reasons the establishment of industrial peace becomes more and more imperative every year. At the same time anything like extended peace becomes more difficult to win and to hold. Notwithstanding the hard blows which have been dealt to them by the courts in recent years, some of the labor leaders are getting to be more arrogant and aggressive than ever.

Philadelphia had an illustration of this truth recently in the street car strike and in the sympathy strike which followed it. Of course the latter failed. Always and everywhere sympathy strikes fail. Sympathy strikes are the quickest and most effective means of alienating sympathy from the strikers which the mind of man has yet devised. In Philadelphia, too, at a meeting of the American Academy of Political and Social Science, shortly after the strike, the head of the American Federation of Labor renewed his denunciation of the judges and the courts because the boycott has been

outlawed, because injunctions are still issued for the purpose, if possible, of averting irreparable injury, and because the courts refuse to draw any line of distinction between law breakers among employers and workers, labor unionists and capitalists.

These outbreaks of demagogy place obstacles in our way in our endeavor to diminish the number and the destructiveness of labor disturbances. They tend to make labor union workers discontented and inefficient, and, in some degree at least, they increase the cost of living. Moreover, they give aid and comfort to the socialistic enemies of the existing order.

In the election of April, 1910, the Socialists obtained control of Milwaukee, which is the largest American city to come under their sway. At its annual conventions the American Federation of Labor has repeatedly voted against socialist propositions, but by many of its teachings and practices that organization has worked into the hands of the Socialist party throughout the country. In a large degree the words and deeds of the leaders of the Federation contributed to the election of Seidel, Milwaukee's Socialist mayor, and of its board of aldermen of the same class.

The maintenance of our whole industrial structure depends upon the efficiency and the reliability of labor, and the promotion of peaceable relations between employers and employed. As shown by a bulletin recently issued by the United States Labor Bureau at Washington, within the past two years thirty-two states have enacted fifty-four laws, or amendments to laws, in this broad field. This shows the importance of the subject. Some of these statutes, however, are calculated to harm instead of help our industrial interests, and thus ultimately to injure the element which they were designed to aid. This is particularly true of employers' liability laws, a few of which were enacted, and other measures in the same line which, though defeated or averted, in the sessions of some of the legislatures in 1910, are certain to be brought forward in the next sessions. Some of these statutes make employers' risks so great that they may be compelled either to reduce wages or to close their mills.

A labor measure was before the Massachusetts Legislature at its recent session, however, which had real merit. It provided that no strike or lockout in any activity in which twenty-five or more persons were employed could take place until the controversy was submitted to a competent tribunal and a finding had been made.

Thirty days' notice was to be given by employers or workers of contemplated changes in wages or hours, the case, in the interval, to be appealed to a regularly constituted tribunal, if requested by either party. In a general way this measure was based on a statute which has been in operation in Canada for three years, except that the Canadian law applies only to mines and public utilities. A powerful element of the people of the Dominion, especially the labor organizations, like the law so well (it has resulted in the peaceable settlement of ninety-seven per cent of the labor controversies) that an endeavor will be made to extend the statute so as to cover all industries.

On the other hand, the Massachusetts labor leaders, supported by the principal officers of the American Federation of Labor, opposed the measure when it was before the Legislature of that state. They did this on the ground that the privilege of striking suddenly, and without notice to employers or public, is a powerful weapon of coercion in the hands of the unions, and should not be surrendered. This is one of the many points on which the demands of the labor union chiefs conflict with the convenience and the rights of the community.

But in appeals of labor controversies to regularly or specially constituted tribunals the public should insist that these bodies be impartial as well as intelligent. They must be free from prejudice of any sort, must refuse to be swayed by the clamor of the demagogue or professional agitator, and must render their judgments with courage and absolute fairness to all interests which are involved. In these days of mobs and hired cliques this requirement of fearlessness and evenhanded justice on the part of boards to which labor controversies are submitted is imperative.

Employers, workers and the general public, however, should understand that no general or lasting industrial peace is possible except through the establishment and maintenance of the open shop. The recognition and the application of this truth form the basis of the success which has been won by the Saint Louis branch of the Citizens' Industrial Association of America, one of the 228 organizations making up the National Council for Industrial Defense. I can speak upon this point with authority, for I was one of the founders of the Association, and was the head of the Saint Louis branch from its organization in 1903 to the present day.

The Association was founded to aid, by all lawful means, the regularly constituted officials and machinery of the city, the state and the nation in enforcing the laws in our community, to establish cordial relations between employers and employees, and to work for the betterment of the city's material and social conditions. Primarily our program was educational, and only secondarily was it corrective and punitive.

At the outset the punitive part of our program was rendered imperative, and we aided in placing many law breakers, chiefly labor unionists and their accomplices, in jail or penitentiary, and sent many others into permanent exile. At the same time, through lectures by men of national repute on the various phases of the general subject of industry, economics and good citizenship, supplemented by leaflets distributed by the hundred thousand, or supplied at nominal figures, we carry on an educational propaganda which has brought a sweeping transformation in the entire industrial situation in the city and its vicinity.

As compared with other centers of its class throughout the country, the relations between employers and workers are more amicable; the open shop—open to union and to non-union men on equal terms—is more widely diffused; the number of strikes and other labor disturbances are fewer in Saint Louis than elsewhere. This is one of the results of the work of 8,000 of the leading citizens of Saint Louis, representing all parties, all religions, and all callings. What the Citizens' Industrial Association of Saint Louis has done in the past few years in establishing industrial peace in that city can be accomplished by the citizens of any other trade center by the display of the requisite intelligence, persistence, courage and tact.

WELFARE WORK AS A WAY TO PREVENT LABOR DISPUTES

By Truman S. Vance,
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Welfare work is not a new movement, but has existed in some form or other ever since the first employer was willing to do a little more for his employees than he had to under wage and other contract stipulations. The name has been applied only since such willingness has crystallized into a well-planned and supervised work. Early efforts were often wrong in principle because they consisted mostly in giving for immediate need, regardless of whether that need was caused by misfortune or shiftlessness. The present form of work is more the giving to employees the opportunity to help themselves to better position and fuller life.

While welfare work has done much, and is destined, I believe, to play still greater part, in preventing labor disputes, the man that inaugurates such work with this for his purpose is foredoomed to disappointment. Welfare work belongs, not to the realm of expediency, but of love. One man may do very little, but in the spirit of unmistakable sympathy and intelligent interest he will establish an inter-feeling of good will and confidence that makes labor misunderstandings and conflict well-nigh impossible; another may have the most elaborate schemes of schools, kindergartens, and general uplift work and in the hour of extreme need find that all his efforts have been considered by his employees as a subtle means to keep them from demanding their rights. Sometimes the employee is right. Men are not wholly lacking in the industrial world who are willing to spend a few hundreds in a generous-appearing way to keep down a discontent that would cost them a ten per cent increase in wages; and again, the man adjudged by his employees out of touch and sympathy with them is often unfit to see more than his own side of the question. Such men are as great enemies to the cause of industrial peace and harmony as the harsh and overbearing.

The first welfare work with which I came in touch was of a crude and unnamed type. The Winifrede Coal Company was a Philadelphia concern with mines employing nearly a thousand men at Winifrede, West Virginia. The houses, while better than at most of the mines, were no better than good business sense would dictate building, the prices in the commissary department were no better than the average, and throughout, the enterprise was organized on a sound business basis that defended its policy of betterment against the charge of being Quixotic, as many mine operators at the time were inclined to regard it. In the center of the village, if a mining town scattered for three miles up and down a narrow valley can be said to have a center, was a little English-appearing church, covered with ivy and set in the midst of a well kept plot of grass. It was just a little bit of refinement that the roughest miner unconsciously reverenced whether he ever attended the services or not. Besides building it, the company added five dollars a Sunday to the scant support of the preachers of the three denominations who used the church. At a battered old building near by was a library where you could get very clean volumes of Ruskin and Carlyle, or very much bethumbed volumes of more doubtful literary merit, especially if they afforded colored pictures. A one-legged employee would stump solemnly down to the library three evenings per week and Sunday afternoons, and as solemnly stump about the room in what usually proved a futile search for the volume called for. Later the company built a good town hall and sent in troupes of Japanese acrobats and jugglers, readers, and better grade entertainers. It paid the cost of these beyond what crowded houses of employees and their families at small admittance yielded. But, like the library, the church and the five dollar spot of green in the preacher's financial desert, it was a token of the company's interest in them and it stood the company in good stead on more than one occasion during my connection with it as cashier.

In 1893, I believe it was, market conditions forced operators to reduce the price of mining from fifty-six and a quarter to fifty cents per ton. Practically all the miners in the Kanawha Valley went on a strike, though the labor in few was organized. Winifrede miners continued to work because they believed the company's statement that it could not pay more than fifty cents a ton for mining. Those of the other mines ordered them to join in the

strike. Their reply was: "You strike if you want to. We are going to dig coal." Then the rougher element of the strikers, 500 strong, marched against the Winifrede mines to compel their closing down. In anticipation of such a hostile move, the company had ordered fifty repeating rifles and as many employees had volunteered to defend the property. Twenty-six were sworn in as special constables and armed. Their determined stand prevented any violence but I shall never forget the thrill that went through me as I looked out of my window that night and counted seven men stationed at various points with the moonlight glancing from their rifle barrels. As an adventurous youngster I was spoiling for a fight and the thought of these men, whether they were right or not, being willing to risk their lives for the company in which they believed, made it savor of a war-time patriotism. The Winifrede mines ran straight through the strike and, out of appreciation of their loyalty, the town hall was given them and the entertainment course inaugurated. It was simply a case of the employer expressing an interest in the employees by doing something more than he had to, and workers believing what the company told them of market conditions.

The only other mine that ran steadily through the strike was the Campbell's Creek Coal Company, which was organized on a co-operative basis. The company took the first profits to the extent of ten per cent on a fair capitalization and the rest was divided among its operatives each Christmas in proportion to the total wage of each. Besides this they allowed the men to buy their homes on easy payments. When this strike was ordered the superintendent called the men together and said to them: "We made money during the first five months, but the market has gradually dropped during the last two months till we are losing money. We have cleared the company's ten per cent and $3,800 to divide among you men. Now it is for you to decide for yourselves whether you would rather dig coal at two cents a bushel and let us clear about an eighth of a cent (you get back all we make anyhow, because we have our ten per cent made already) or will you run on at two and a quarter cents until you lose your $3,800 already earned? When you get down to our ten per cent we will shut down or reduce the price." They decided, after a brief discussion, to accept the two cents, as all the profits would come back to them anyhow. If I remember aright they had a total of about $7,000 to

divide among them the following Christmas, and this was the happy ending of what proved a disastrous year to both operatives and operators at most of the mines and all because the company had the forbearance to consider ten per cent as a legitimate share of the profits.

The causes of labor disputes are as often imaginary as real. Without doubt there are numberless cases of unfair division of profits, wages on one hand and dividends, on the other, being out of proportion to the service rendered; or conditions and surroundings of the workers may be needlessly bad. But often workers waste their wages in dissipation and are rendered surly and discontented by the thought that years of labor have left them nothing the gainer in anything. The welfare work done by the Young Men's and Young Women's Christian Associations in industrial fields very wisely lets alone the question of wages and dividends and confines their work to the betterment of environments and morals. While I was employed looking after some cotton mill work in the South, there came to me confidential reports of a marvelous work being done in some construction camps along the line of the Chicago, Milwaukee and St. Paul Railroad's extension to Seattle. Soon one will travel smoothly along this route to the Pacific, with all the comfort of modern travel. Great bridges will attract but passing attention, tall trestles and long tunnels will cause less wonder than annoyance at their frequency; but here for many months thousands of men beside the great rivers and among the mountains builded and burrowed and dug and died at the battle front of industrial progress. Hardship and monotony made the life of all a desert; saloons, gambling places, and fallen women made it a hell. Sunday was not observed because it would have been a day of dissipation likely to prove but the beginning of a prolonged spree to many.

The first point at which work was taken up was Pontis, South Dakota, where some 500 men were building a $2,000,000 bridge over the Missouri River. Every bunk house was full to overflowing and many sleeping in box cars, but the company agreed to send up an old passenger coach to be used for Y. M. C. A. purposes. But the biggest asset of the work was the secretary, Mr. Morrison, whose vigorous and novel methods of work made equipment a secondary consideration. Allow me to quote from International Secretary Day's report:

"I found there was no one in charge of the mail for the camp, and as a consequence it was brought from the little post office at Flora, two miles away, at irregular intervals and dumped on to the counter where were sold tobacco, overalls, etc., with the result that in such a promiscuous mess it was a common occurrence to have letters lost or the envelopes worn out before they reached the owner. Then, too, it was impossible for any one to register a letter or secure a draft from the bank at Mobridge, which was the only way for them to send money home, without losing a half day's work, so I suggested to Mr. Morrison that he immediately take charge of the mail in the camp, build pigeon holes for the letters and provide boxes for papers, etc., and also offer to register letters for the men and provide them with postage and other conveniences. We also got out immediately a large quantity of letter heads and stocked up with pens, ink, etc., and provided every bunk house with suitable writing materials and urged the men to write letters home, offering to mail them twice a day. The effect of this was that even the foreigners who could not understand our language could understand our kindness, and they felt kindly toward Mr. Morrison. The result of this work was that the number of letters written home increased three-fold immediately.

"The car was set on a piece of track at a convenient location in the camp and fitted up with electric lights, supplied by the local plant. The company also kindly built a storm shed, on one end of the car, putting in small tables for reading and writing, provided hard coal for the two stoves in the coach, and extended every courtesy possible to assist in making the work a success. A good list of magazines and papers was provided; also checkers and chess.

"From the day the coach was opened it has been used to its full capacity. It is open constantly, and men are always found there. Sometimes as many as fifty at a time, reading, playing checkers, chess, etc. Gospel meetings are held in the car on Sunday nights, and although it seats but fifty, as many as 100 men would crowd into the car for these services. After a short time the Sunday services were transferred to the camp dining-room, where they were largely attended. A stereopticon and talking machine were provided and are in constant use, some social affair being conducted every week. I visited the camp about the middle of December and

gave the men a stereopticon talk. Over two hundred and fifty crowded into the dining-room, filling every bench, some sitting on tables and all as orderly a congregation as one would find in a modern church. At the close of my talk I thought it would be well to try to get the men to sing as a fitting close to the evening's service, the only song I had with me. 'Yield Not to Temptation,' and when Mr. Morrison threw it on the screen such singing I have seldom heard. They fairly made the windows rattle. I closed the meeting, or thought I had, but the men did not move, and some one called out: 'Let us sing more.' From the only song book in the camp, an old 'Gospel Hymns,' we sang there an hour, the men calling for hymns such as 'Rock of Ages,' 'Nearer My God to Thee' and 'Where is My Wandering Boy To-night.' When I saw how late it was getting I announced that we would sing one more hymn and then close to let the cooks have the room to arrange for their early breakfast. One of the men, an employee of the 'bull gang,' leaned forward and in a half whisper said, 'Don't close, partner, until you pray for us,' and I did pray as earnestly as I knew how for those hundreds of hungry-hearted men into whose faces I was looking. As we went out into the moonlight one of the men asked me to go to his bunk house and talk with his partner who had gotten to gambling. I rather protested that it was a delicate matter to go into a bunk house occupied by so many men to talk upon that matter, but he insisted that I should go with him and I did so. As we approached the bunk house he explained that we would find them all gambling, but he said, 'Don't you be afraid to talk to them, for it will do them all good.' To his surprise, we found upon our arrival that there was no gambling going on in the bunk house, and he exclaimed, 'Well, I'll be——partner, your meeting knocked out the gambling to-night.'

"His partner proved to be a strapping big fellow of about twenty-five, and he yelled to him, 'Come here, Bill, I brought this fellow over to talk to you about your gambling.' It is needless to say that I was somewhat embarrassed, as six or eight other men sat about the table smoking. However, I began to get acquainted with 'Bill,' in the meantime edging toward the door, and soon got both men outside where we had a real heart-to-heart talk over the whole matter, with the result that when I left they had covenanted together to both 'cut it out.'

"Several barrels and large boxes of books have been sent from various points on the road, and carried free by the company for use not only in this camp, but this matter is carried out along the line for 150 miles by the secretary and distributed in small camps in which are quartered about 1,000 men in addition to those at the bridge. This is greatly appreciated, and the men frequently write in, urging that more reading matter be sent them.

"Although the attraction of the car kept a good many men from Mobridge on the next pay day, which occurred December 24th, a large number of them went up there, and with money in their pockets and the Christmas spirit in the air, it is not altogether strange that a good many got 'roaring drunk.' Morrison did not lose his head, but started for Mobridge, and when men would get drunk he would get them into a rig and haul them down to Pontis and put them to bed in their bunks. Among others whom he took care of in this way was a little Irishman who had started in to lick a fellow about twice his size, and was making splendid progress when Morrison stopped him, loaded him into a wagon, packed him off to camp and put him to bed. Before leaving him, Morrison secured a promise that he would come around the next day and sign the temperance pledge. True to his word, he showed up about seven o'clock at the bunk house where Morrison was then sleeping. Pounding on the door, he told Morrison he had come to take his pledge. After he had signed it, Morrison was hesitating whether to pray with him or not, as it was a little embarrassing because of the presence in the room of six or eight other men, most of whom were surveyors. While he was waiting undecided what to do, there was another knock on the door, and a big engineer who runs the carrier, a machine which is used in erecting steel beams, walked in and told the secretary that he too had come to take the temperance pledge, 'for,' said he, 'I'm sick of the life I have been living.' After signing the pledge he reached his big hand across to Morrison and said, 'Mr. Morrison, I mean business. I want to go all the way with this thing and I want you to pray for me right here.' They knelt beside one of the bunks and both of them prayed most earnestly for God's help in saving this man to the uttermost.

"As they arose from their knees, the little Irishman who had been looking on piped up, 'Boss Morrison, ain't yer goin' to bless me off too?' 'Certainly I will,' said Morrison, and they got on their

knees beside the bunk and prayed that Mike might be thoroughly saved and kept from his old life. As they arose the six surveyors came across the room, and taking both converts by the hand assured them of their sympathy and help in their new life—the first converts of the Pontis Railway Construction Camp.

"One of the worst evils of these camps is the cashing of pay checks in the saloons. This is a great convenience to the men, because they cannot go to town and get their checks cashed at a bank without losing a half a day's work. The result is, that they go to these places after work is over, and the saloons always make it a business to have money on hand for cashing these checks; they invariably get a considerable part of it back in the drinks, gambling and other evils which are found at such places. I was able to induce the banker to send the money to the Y. M. C. A. car on the condition that the Y. M. C. A. secretary guard the money, for it is a risky thing to carry money three miles in a buggy in that country where every man is a law unto himself. At the appointed hour Morrison appeared at the bank mounted on a 'calico' bronco with a six-shooter in his belt, escorted the money to the camp, where he guarded it while it was being paid out; at the same time he urged each man as he received his money to deposit a part of it with the banker, and as a result over $2,000 was put back into the banker's hands to the credit of those hard-working men—making over $8,000 which these men have been induced to save or send home in three months that Morrison had been there, four times as much as they would have saved before. It had been customary there for several months to have at least fifty drunken men in the camp, immediately following pay day, and it was an established rule that the cooks would get drunk. The first time the checks were cashed by the Y. M. C. A. there were but two drunken men in the camp and none of the cooks were drunk, much to the surprise of the management, and I imagine to the disappointment of the saloons at Mobridge.

"Upon my recent visit to Pontis, I asked Morrison about his list of 'D. T.' men (delirium tremens) and found that he had but two on the list, one of whom was Dan, the hostler of the camp, a genial, big-souled fellow who always boozed after pay day, and never had been able to keep sober for a month at a time. As usual, Mrs. Morrison was fixing up poached eggs, toast and other deli-

cacies for this poor fellow, which Morrison took to him in his bunk, showing him other kindness in the way of attention, and as soon as he was able to be out again they invited him over to their one-room home for supper. As they sat about the table the sight of the two little boys, three and five years of age, and the home touch which only a woman can give, greatly impressed Dan with his need of living a better life. After supper the conversation led to his spiritual condition with the result that before he went home he had knelt with the family and accepted Christ as a personal Saviour. That was over a month ago and the change in Dan's life is one of the modern miracles which has made a deep impression upon the men in that camp.

"A few days ago Mr. and Mrs. Morrison invited Dan and a friend of his, named George, to take supper with them. When they sat down to the table, George did not begin eating, but hung his head. Dan asked him if he was not hungry, and he replied, 'Yes, but I can't eat anything for I am so ashamed.' Mr. Morrison urged him to eat something, but he only replied, 'I am too ashamed of myself.' It seemed to Morrison that now was the time to present Christ, for it was evident that this was his great need, and he urged him then and there to take Christ as a Saviour and keeper, and when the question was put straight to him as to whether he would do so, he replied, 'Yes, I want to be like Dan.' The supper was stopped and Morrison, his wife and the two little boys, and Dan and George all went on their knees in prayer, and when they arose George had won the greatest victory of his life. Dan went around the table and putting his arm about George's neck, said, 'Now, then, we are two of a kind,' and supper was resumed and finished. Mrs. Morrison's loving interest in and sympathy for these sin-tempted men had much to do with winning them for Christ. When I suggested to her one day that I thought she was a heroine to make the sacrifice which she is doing to live in such an isolated camp as that, she replied, 'Heroine nothing. If these other women in camp (five or six wives of employees) can live here simply to make money, it certainly is no sacrifice for us to live here for a higher motive.'"

Lack of patronage closed several of the saloons at Mobridge and an enforcement of the law forbidding a saloon within five miles of a construction camp rid the town of the rest of them.

When the bridge was finished, the car was sent up and down the road serving a number of points in the same way. Camps at tunnels that required long periods of work were provided with temporary buildings for social, educational and religious work. Foreigners were taught English; Americans given courses in everything from English literature down to the rudiments. College men, one an LL.D., of Ann Arbor, were really plentiful, cast up by dissipation's tide and they celebrated a new life by teaching night classes, leading debates and aiding in social work, and thus among the greater number in the camps the dead monotony of the life was broken by clean recreation and mental improvement instead of wild abandon, and the cause of industrial peace and good will enrolled the men of real leadership along a great railroad system.

But why give more instances? As our old chemistry professor once said to a student who accused him of not having read all his rejected thesis: "Mr. Gaines, one doesn't have to eat a whole ox to know whether the beef is good or not." So from the great mass of good that is being done among employees I have given but one instance of modern welfare work that analyzes high in helpfulness and hopefulness. It seems that men are beginning to apply the Master's teachings to the industrial problem. He once said that we should treat our fellow men as we would have them treat us. Men recognized the wisdom and goodness of this and called it the Golden Rule, but unfortunately they put it by in a sort of glass case of impractical veneration, to be seen and admired, but not to be used. It is to await the arrival of the golden age it is believed; while, in reality, the golden age awaits a sensible use of the Golden Rule. We have been using the Iron Rule, a standard very like a carpenter's square, with one long and one short end, and labor disputes have too often been the result of each side trying to hand the short end of it to the other. Welfare work simply says there is a better rule and has shown that it is practical.

THE SYMPATHETIC STRIKE

By C. O. Pratt,
Chairman, General Executive Board of Amalgamated Association of Street and Electric Railway Employees of America.

The sympathetic strike judiciously used is a potent weapon for good. Arbitrarily used it is dangerous and would result in a calamity. Self-preservation is the first law of nature. In order that the smallest amount of injustice may result we have a government which is supposed to guarantee equal rights to all and special privileges to none, and every citizen is guaranteed the right to life, liberty and the pursuit of happiness. The centralization of wealth in the hands of unscrupulous employers who have studiously entrenched themselves, has changed these conditions to the extent that the interests of individuals are entirely lost sight of. Instead of a government of the people, by the people and for the people we discover, in some instances at least, that we have incompetent municipal officials who are as putty in the hands of those who mold and control them for the benefit of private interests.

As an illustration of a condition that warrants a general strike, the recent street car strike of Philadelphia affords an example. The political and transit interests in this city are so interwoven that each has tried to serve the other's interest regardless of the rights of the people. A year ago the street car men of this city established a union for their elevation and self-preservation. The political interests immediately sought to control the votes of these men and use them as an asset to their political intrenchment. Paid spies and detectives were worked into the union, but notwithstanding all the efforts made, the carmen were not to be controlled. Because of this, immediate plans were begun to exterminate the union and its leaders who were unwilling to surrender their political freedom and become a part of a machine which has for its purpose the perpetuation of its political power and domination.

To sum up the situation briefly, it can best be described by a statement that I am creditably informed was made by a representative of the political-transit interests prior to the strike. "The car-

men's union is going to be exterminated. We have been successful in electing a district attorney and the courts are at our disposal. The city administration is absolutely with the company and the cars will be run even if necessary to man them with the firemen and policemen. The state constabulary is also at our command and the newspapers have been bought up. Through the company's press agent we have discredited the carmen's union with the people and they will not have public sympathy. We are going to force the strike at a time of the year when the weather is most inclement and that will further incense the people against the carmen and they will also practically be compelled to ride in the cars."

The company's secret detective force, augmented by the city's detective force attempted bribery, intimidation and coercion. Kidnapping and spiriting to Moyamensing Prison in order to discredit and besmirch the character of the carmen's representatives were also resorted to. This was the elaborate programme mapped out and worked out for weeks before the strike took place. Trickery and treachery were resorted to in attempting to negotiate a settlement that would of itself destroy the union without a strike. Finally, wholesale discharges of the oldest and best employees of the company "for the good of the service" forced a lockout. Imported armed thugs by the trainload were dumped into the city to incite riot and to shoot to kill. It is currently reported that practically the entire Pinkerton detective force was also turned loose, the state constabulary were brought in, "Brownie" policemen were recruited from Bowery and Tenderloin districts, and well-known thugs and criminals were uniformed and given guns and clubs.

The manufacturers and merchants and business men's associations all over the country poured in telegrams endorsing the gigantic conspiracy of the political-transit combination, pledging moral and financial support and commending the company in their refusal to arbitrate. Polished perjury by men of high rank was indulged in an effort to misrepresent the strikers and place them in a false position before the public. This was a part of the gigantic "sympathetic" combine of capitalists, employers and professional politicians who were determined to destroy every vestige of the carmen's union.

It was an unequal contest for one organization of labor to meet single-handed, deprived of every weapon of defense, and practically pinioned as a target for a hired band of strikebreakers who were put

upon the cars, and the city's blue-coated police, wrongly called minions of the law. There was a total disregard of the rights of the people by the city officials, who ignored and violated their oath of office (notwithstanding the fact that the city has a contract with the traction company, which makes every citizen an interested party to a controversy which involves their welfare). After a week of most cruel and unwarranted strife, there was an open revolt on the part of the wage-earners, organized and unorganized alike.

Why should not the wheels of industry be stopped in the face of such a conspiracy as this? Should working men and women continue at the wheel and turn out profits for their employers to be handed over to the gangsters for the purpose of destroying their fellow-workers and simply await their turn to be selected for the sacrifice later on?

It is claimed in their last year's report that the United States Steel Corporation realized a profit of $600 as an average off of each of their employees, yet a large percentage of their employees receive less than $500 for their entire year's labor. How can a wage-earner support a family decently on that amount? Surely he cannot afford to give from that small pittance to assist a fellowman on strike. The employer takes all of the profits and, therefore, so long as his business is not interfered with he can contribute that profit to another employer who has a strike on his hands. When the wheels of industry are stopped the profits to the employers cease, they then have financial losses of their own to meet and cannot give money to another employer to assist in destroying a labor union and forcing down wages.

The general strike in Philadelphia was a decided success. Without it the carmen would have failed. Public sentiment would have died out, for the people would never have understood the true facts as there was not a newspaper in this city that ever published them. It was an educational movement that enlightened the people to an extent that could not otherwise have been done. They witnessed the desecration of the stars and stripes by the city police. They saw innocent people arrested and railroaded through the courts. Drivers were not permitted to carry passengers in their vehicles. Meeting halls were raided and wholesale arrests were made without right or reason. They saw city officials deny the people their constitutional rights, defy and set aside all law, and prostitute their oath of office.

The general strike was positive evidence before the world of the justice of the carmen's cause, and there was no other way by which this fact could be established. The truth of the actual conditions became generally known and understood. It was a test and an evidence of the loyalty of the working class of people to the principles of our republican form of government, and proved conclusively that they can be depended upon to defend justice and right and the preservation of our constitutional liberty against any foe.

Our forefathers acted in sympathy when they threw off the yoke of tyranny and fought for the establishment of a government of the people, by the people and for the people. Our own fathers, many of them, from '61 to '65 did not stop to ask if they had contracts with their employers when they went to the front to fight for the preservation of the union and eventually the freeing of the chattel slave. Nor did they stop to question whether such an action would injure a friendly employer. There was a paramount issue involved which surmounted all other questions that were insignificant in comparison. So it was in this strike. The combined employing interests, controlled by a corrupt political ring which deals out special privileges to one class and attempts to terrorize the other, demanded the complete surrender of the rights of the working class. In this they failed, and their failure was due to the sympathetic or general strike, the fruits of which are yet to be more fully realized.

It is true that the innocent often times suffer with the guilty, but the object is to obtain the greatest good for the greatest number. The chattel slave owners were made to suffer and were financially ruined. The wage slave owners of to-day are often more brutal and intolerant than were the chattel slave owners. The system may operate differently, paid spies, the blacklist and the prison are used, while the professional strikebreaker acts as the modern slave driver armed with blackjack and gun instead of the rawhide and the whipping-post of former days.

A strike can best be settled before it actually occurs. If the employers and the employees are not sufficiently broad-minded to meet in conference and work out a satisfactory adjustment of differences, then voluntary arbitration should be entered into. Especially is this true where a quasi-public corporation is involved

which affects the entire community. If let alone the Philadelphia Rapid Transit Company would never have permitted this strike to take place, but under the political lash they were compelled to say "there is nothing to arbitrate." The director of public safety is a heavy stockholder in this company. Why should he not use his public office to protect his private interests, politically as well as financially? Other politicians are deeply concerned in the financial interests of the Philadelphia Rapid Transit Company. The official head of the city was quoted as not believing in arbitration, either in the settlement of industrial disputes or in disputes between nations—that they must be fought out. A so-called contract exists between the Philadelphia Rapid Transit Company and the city, which permits the city to have three directors upon the company's board of directors, the mayor is one, George H. Earle, Jr., was another and William H. Carpenter a third. None of these men ever advocated or urged arbitration.

Net results, thirty innocent lives crushed out under the wheels of cars that were operated by incompetent and unskilled men. No one knows how many hundreds of accidents occurred that will cripple or maim people for life, nor is it known how many were shot and killed during the strife. Some one is responsible for that senseless strike, and the wanton sacrifice of life. Nothing was gained by the company or the political interests. Indeed, both are in worse repute and both on the verge of political as well as financial bankruptcy. The carmen's union is back to work for the company without having sacrificed its political freedom. The great civic awakening caused by the general strike is yet to be taken into account. The benefits that will result therefrom will be immeasurable. Organized labor in this city has been increased by at least 20,000 members and the work is still continuing with rapid progress. Wages throughout the entire community have been advanced, and other employers have modified and improved working conditions to an extent unequaled at any previous time. Unionism was placed on trial. All over the country unionism was victorious. No demands were made upon the traction company by the carmen, no question of new conditions was involved. It was the breaking of a contract by the company made and entered into by the two contending parties last June. It was a prearranged lockout of the union. Senator McNichol and the Mayor had pledged that if the June con-

tract would be accepted by the carmen at that time that they would guarantee its fulfillment by the company. What a reflection upon their guarantee! What a double cross!

A thorough organization of labor directed by wise and conservative leadership is the strongest fortification that can be established for the preservation of our republican form of government. It is the strongest guarantee that our constitutional liberties will be protected and perpetuated. Without such an effective balance of power we will become a judicial monarchy controlled by selfish moneyed interests that will lead the nation back to the oppression and tyranny that our forefathers fought against and from which they successfully escaped.

STATE AGENCIES FOR DEALING WITH LABOR DISPUTES—THE EXPERIENCE OF NEW YORK[1]

By John Lundrigan,
Chief Mediator, Bureau of Mediation and Arbitration, Albany, N. Y.

It is to be assumed that we are all practical men seeking a practical solution (perhaps improvement would be better) of the existing relations between employers and employed. Therefore it is well to look over the record of past experiences with a view to pointing out the obstacles encountered and with the hope, and in some degree the expectation, that at least partial remedies may be suggested.

Governmental, provincial and state laws are enacted, construed and executed—I almost said in a spirit of confusion—to say the least, without any active consultation or co-operation between the separate government agencies. For instance, we find twenty-five states having some form of statute law dealing with this subject and charging its execution or enforcement to certain state officers, the provisions of no two statutes being alike. Titles of officers, together with their methods of procedure, compensation, number of executive officers, etc., are so out of harmony or proportion that they might well cause one unfamiliar with our general system of government to wonder whether the several states occupied harmonious or antagonistic governmental relations with each other. The blame or responsibility for this condition rests on no one and nowhere in particular because of the fact that until within the present generation there appeared to be only few occasions when it seemed either wise or necessary that the government should interfere directly with industrial relations between employer and employed.

With the latter-day growth of industrial effort through the consolidation and amalgamation of productive agencies represented by the employing interests as well as the employees' unions and associations, we are face to face with the fact that industry has

[1]Extract from an address delivered at the International Convention of Arbitration Commissioners in Washington, January, 1910.

eliminated state lines in every sense of the word so far as development and direction, I think I could say control, are concerned, subject only to certain police powers and taxation for that portion of its plant or capital within certain state lines. The workingman's combination or organization has long been interstate, but really more intrastate or local, in character than most large employers, owing to the generally known fact that especially in matters which might result in an interruption of industry in the form of a strike, the smallest factor, that is, the local organization directly concerned, must exercise original jurisdiction or decision and its course of action be sustained by the national or international body; whereas in the case of an employing corporation which is apparently a state corporation having plants or facilities in other states, the controlling corporate authority can at its pleasure cause the cessation of industry in any of the states where it operates.

Then comes the third estate, the general public, which is made up very largely of employers and employees. This interest is supposed to be the special charge of governmental agencies, and its welfare and protection their first duty. What the public as a whole seems to want at this time is publicity. That is, as I understand it, positive, accurate, public official information. Believing that when this is promptly had public sentiment will compel a reasonable solution, my judgment conforms to this idea, at least to the extent that if the expected relief does not ensue, government will have at hand the necessary information to create and apply such legislative and executive remedies as conditions warrant. No one will fail to grasp the necessity for co-operation and uniformity in both manner and method of carrying out this principle. For instance, in the case of a corporation engaged in telegraph, telephone or express business or the manufacture of steel, iron, paper and many other commodities, the corporation may be a state corporation with its executive offices in one state and its productive departments and energies in several other states. It is possible that a large part of the industry may be interrupted on account of a strike or lockout, and that there may be no interruption in the state where executive authority exists. Under such circumstances at the present time there is no possible legal method of securing accurate information. I doubt whether or not one can be established except through federal authority, although it might be

possible if all state agencies had the authority to investigate now vested in some of the states to conduct a co-operative investigation, *i. e.*, each state investigate that portion of the industry involved which was actually within its own jurisdiction. Here will be seen the necessity for uniform authority and especially uniform methods, together with actual co-operation with the other state governments and the federal government as well. We should also do everything in our power to encourage and secure the assistance and co-operation of any and all civic bodies which are not engaged in open warfare on the principle of industrial collective bargaining as well.

In the first place, there should be written into the public records of our national industrial life definite information, commonly termed statistics, showing the loss of industrial energy caused by strikes and lockouts, together with causes, methods of termination, etc. It may be contended that this is done at present. My answer is, this information is at best collected and computed without any reference to uniformity of system or method as between separate states or subdivisions of government. It is true the federal government undertakes to collect and compile this information at separated intervals, but it is nearly always confronted with the situation that the dispute and very often the direct participants, especially the representatives of the employees, have passed into oblivion before the work is undertaken. I strongly urge the importance and value of uniform methods in both collection and compilation of statistical information on this subject and recommend that a committee be appointed to consider the systems now in vogue with the object of recommending to this conference, or later to the participants therein, methods which will have a uniform basic principle and as nearly as possible similarity of detail.

The logical sequence to this recommendation is also an argument for, in fact demonstrates the necessity for, co-operation between separate state boards and federal departments in the collection of information with reference to disputes interstate in character, as, for instance, the national strike of telegraph operators three years ago, the International Paper Company strike of last year and the hatmakers' strike of the year just closed. I venture the opinion that no bureau or department has or ever will have reasonably correct statistical data on those or similar disputes, mainly

due to two causes—lack of uniform methods and absence of co-operation, as well as dearth of resources. Hence I trust this conference will, so far as possible, encourage and promote the principle and practice of co-operation between the several states and with the federal government.

Practically speaking, we will now assume we have discovered the existence of a strike or lockout. We have provided and are putting in practice a comprehensive system or method of securing and compiling the statistical information. Other states in which a portion of the industry may be located are co-operating with us in this direction. But what about making an effort to terminate or adjust the dispute? Every man who has had practical experience will join in the contention that there is no hard and fast rule to go by, and in the light of experience I cannot refrain from suggesting a comparison which occurs to me, inspired by the remark of an old consulting physician in a case of serious illness. He looked the patient over carefully, asked numerous questions and later said: "Well, the patient is going to recover, but," he said, "do you know, I would give up the business of a consulting physician if I could afford it, because I am scarcely ever called in until there is no help for the patient and when death ensues, I head the list of physicians in attendance." So with the public official; he is not wanted, often not tolerated until one of the parties to a dispute is at the end of his other resources, then said party demands that the public agency interfere, but the other party says the dispute is dead. That is human nature, I might say human selfishness—possibly human suspicion—and after all, we might present the same attitude in the other fellow's place.

Consequently the public official who seeks to intervene in labor disputes with the limited authority at present vested in such officials must conduct a continuous campaign of demonstration to his constituency, embodying the positive propositions of ability, courage and integrity; ability standing for actual and practical knowledge on the general subject of industrial disputes and courage to demonstrate that fact, prepared after reasonable inquiry to make some positive recommendation or suggestion to meet or overcome the questions in dispute and, if necessary, to take the responsibility for criticising the position, attitude or contentions of either or all parties to the controversy. It goes without saying that no one

who has the appearance of prejudice or bias, or whose personal or official integrity is even doubtful, can engage successfully in work of this character. Summed up, there is no place in an industrial dispute which has assumed the form of a strike or lockout for a public official who has neither the ability to recommend some reasonable method of solving the problem presented nor the courage to present it.

This brings us to the stage where mediation and conciliation have failed, and what then? It seems to me that depends on the character and importance of the industry. If it be of a public or quasi-public service character, necessary to the welfare, comfort or convenience of the general public, there should be forthwith a thorough public investigation conducted by the state or governmental body having jurisdiction in the premises. And, by the way, state and national statutes should be created or strengthened so that either the federal or state government should have jurisdiction in every such situation. I am firm in the belief that if it were a generally accepted fact that a full and thorough official investigation of every important strike and lockout would be promptly made and a formal finding and public official recommendation ensue, a very material reduction in the volume of such disputes would be effected.

But, my friends, *here is the rub.* It takes time and money to conduct investigations. As a matter of fact, it takes time and money and tact and patience and oftentimes self-restraint to do almost any of the things indicated in the mystic words, "conciliation, mediation and arbitration." Have we said, or can we say, that, given so many more dollars, we will return it manifold to the state through minimizing interruptions to industrial energy? Whether or not such statements would be credited is another matter. In any event, it is a foregone conclusion that a percentage of our people would immediately raise the question of governmental interference with individual or property rights, which could well provoke the retort that labor disputes are about, if not quite, the only phase of human existence or endeavor in which government does not now interfere and, I might add, while I am at this time opposed to compulsory arbitration, industrial disputes are about the only form of human contention in which government does not arbitrarily compel adjustment.

Then we always have with us the individual who insists on preserving the autonomy and authority of the state. I would have no objection to his contention if the factors composing our industrial life were confined to state limits or jurisdiction. We all realize this to be not only an impossible proposition, but an undesirable one as well. We are in an age of combination, the doing of things collectively, especially as applied to industry, and it stands to reason if there is to be any effective supervision or regulation it must be collective or at least co-operative in character. As a matter of fact, in nearly all large avenues of employment, especially those that are public or semi-public service in character, the individual employer has given way to the corporation, which is a creature of government. I can see no good reason why, when through the medium of a labor dispute an industry controlled by a corporation is suspended or seriously impaired in operation, the stockholders, to say nothing of the public, are not entitled to know the cause thereof. It would also seem that this knowledge would be of great importance to the legislative branches of government in order that if legislation were advisable or necessary it might be based on reliable information.

Turning to the federal department of labor and federal legislation on this general subject, I believe no one at all familiar with the recent industrial history, especially the two critical situations on the railroads, first the so-called Western Association dispute three years ago and a year later the dispute on the railroads in the South, will other than thank Providence and the United States Congress that we had such a statute as the Erdman Conciliation Act, and it might well be said, such capable men as Commissioner of Labor Neill and Chairman of the Interstate Commerce Commission Knapp, to administer it. Inasmuch as this is practically all of the executive authority the federal government has thus far enacted into law on this subject, it would perhaps be well to consider whether or not it is adequate to meet conditions which may at any time arise. Personally, I am of the opinion that it is not. As a matter of fact, a situation familiar to several of those present appears to have existed on the Great Lakes during the entire season of navigation for 1909 which was investigated so far as possible by the combined boards of arbitration of several of the great states of the Union, which according to a statement signed by them con-

tained many grave contentions, and apparently involved nearly 8,000 workpeople as well as a loss to industry which cannot be measured or computed. No single state had either sufficient jurisdiction or equipment to make proper inquiry. Although I am merely stating a fact in asserting that all the representatives in the joint conciliation board were of the opinion that a full inquiry should be made, I believe the federal law should be so amended as to include all interstate commerce industrial disputes within the jurisdiction of conciliation and investigation.

Another point I desire to make, in justice to, rather than in criticism of, the present federal officials charged with its execution. It seems to me that both the federal commissioner of labor and the chairman of the Interstate Commerce Commission are so thoroughly and completely engrossed with other important and often imperative administrative duties that they, not the present individuals but the officials referred to, should be relieved of the administration of this law, and other agencies provided. I also believe the principle of permissive or positive right of official investigation should be incorporated into the law and that the present avenue for appeal by either party should be retained as well. This would eliminate the possible contention as to the right or jurisdiction of government to intervene, without taking away any relief now afforded to the contestants and, which is perhaps of more importance, permit the governmental agency to determine when intervention or investigation was advisable or necessary without waiting for request from either party.

Another, and, in so far as it can have practical application, perhaps the most important phase of the whole subject, is prevention of strikes and lockouts. At times this looks to be an impossible proposition, but when we stop to think of the many ramifications of human existence which in the past were admittedly or at least negatively impossible of correction which time and education have solved, we are encouraged to renewed effort, firm in the belief that human character is being continually elevated and purified and that our constantly enlarging and improving educational facilities must and will aid materially in the substitution of right for might, reason for force and conciliation coupled with arbitration for strikes and lockouts. Summed up in that potent phrase,

"Let us reason together." We said in substance in our 1901 report to the New York State Legislature:

> A somewhat new development is being manifested in our industrial life by the creation and organization of associations of employers. . . . If the dual organizations of employers and employees realize and recognize their interest in and dependence on each other and each within its proper sphere gives consideration to the claims and contentions of the other, good rather than evil must result. . . . It goes without saying that practically all employers in a given locality engaged in the same general avenue of industry are natural competitors and in a position to grant practically the same terms and conditions of employment, which must have the effect of eliminating the labor cost as a factor in competition. Therefore agencies through which uniform terms and conditions of employment can be established in competitive industry are more just and feasible than the enactment of separate bargains by separate employers and individual employees or separate groups of employees. We know of no vehicle through which this can be accomplished except that of the trade agreement.

I can see no reason to vary one iota from the text as then written on the subject of providing the most reasonable expedient now at hand for a clear and comprehensive understanding between the organized forces of capital and labor. It is nevertheless a fact that many strikes have occurred as a result of the single contention "whether or not an existing trade agreement should be renewed." We have met this situation by urging parties to such agreements to inaugurate a specific provision in all new agreements and old ones renewed providing that "This agreement shall be in full force and effect from ..... (date) to ..... (date) and thereafter until either of the parties shall have given the other ..... (number) days' notice in writing of their intention to terminate the same, and that nothing contained herein shall be construed to prevent either party from proposing any amendment to take effect at any time after the original period designated." The effect is to provide a continuous agreement which can easily be terminated and at the same time give ample opportunity for discussion and amendment. Our experience justifies the contention that this provision is assisting materially in preventing strikes and should be generally recommended.

The policy of the New York State Bureau of Arbitration in dealing with this subject is so clear that he who runs may read. We enter into no defense of our position or policy, neither do we

apologize for anything connected with our treatment of this subject except our own personal limitations. Since the establishment of the present bureau in 1901, all of the energy and effort at our command have been directed toward seeking to conserve honorable industrial peace between employer and employed. At no time during that period have we been able to see how this could be generally accomplished except through the medium of mutual understandings between the employers and employed. The only sane method of which we are yet aware is what is usually termed mutual bargaining or trade agreements, coupled with provisions for local or other arbitration of questions which cannot be mutually decided or that arise outside of such agreements. We have proceeded on the theory that as a general proposition the most lasting and satisfactory industrial peace can be secured through agreements made by the parties at first interest and we have stood ready to furnish such data, advice or information as we were possessed of to either or both parties. On the other hand, where there has been a continued interruption of industry causing not only loss and inconvenience to the parties directly involved but to the general public as well, we have not hesitated to place the responsibility where it appeared to us to rightly lie and in the case of serious interruption of public utilities or practical public service corporations to go so far as to suggest the possible necessity of compulsory settlement. Public officials or others engaged in an honest effort to promote industrial peace along the foregoing lines need not expect either consideration, support or sympathy from those who believe in the right of might.

We see men who appear to be fair-minded and intelligent on most subjects insisting on the right of their interests to consolidate and amalgamate and absolutely denying such right to the other fellow; men decrying paternalism and contending for the absolute right to dictate the conditions under which other men shall earn their living. We prefer to look at the whole subject of our industrial life from the viewpoint that its development has been so wonderfully vast and rapid that many of its important ramifications have been at least partially neglected, the bad effects of which are becoming more patent and for which remedies must and will be provided. Organization is here, both of capital and labor, and here to stay. There are, no doubt, many phases of organization,

corporate and otherwise, capital and labor, that are harmful and even wrong. Let us seek to cure the evil instead of undertaking to kill the principle.

It seems a pretty good proposition to subscribe to that government is greater than any of its creations whether they be citizen or corporation, and, it might as well be said, greater and more important than any of its sub-divisions; and I believe that government will eventually find a way to dispose of this question in such a manner as to operate for the general good, even if it is necessary to interfere with some of the so-called existing rights of individual citizens, corporations, organizations or even sub-divisions of government.

THE NEXT LEGISLATION ON INDUSTRIAL DISPUTES IN MASSACHUSETTS

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Throughout most of the world existing laws for the control of industrial warfare are accomplishing relatively small results. For example, in Massachusetts in the five years 1904 to 1908, inclusive, there were 950 strikes, affecting 3,196 establishments, involving 94,923 strikers, throwing out of work 45,535 other employees, thus causing loss of wages all told to 140,458 workers, who lost approximately 5,353,839 working days, which at the average wage-rate meant a loss to the employees of about $8,500,000, with a loss to the employers of corresponding profits, to say nothing of waste through idle plants, interest on idle capital, loss of customers, and damage to allied industries. About twenty-four per cent of the strikes wholly succeeded; thirteen per cent succeeded in part; five per cent were reported as "indefinite or unsettled," and fifty-eight per cent failed; two-fifths succeeded wholly or in part; three-fifths failed.

In Austria in 1906 there were 1,083 strikes, affecting 6,049 establishments. In Belgium in the five years covered by the report of 1907 there were 474 strikes, affecting 1,281 establishments. In France in 1906 there were 1,309 strikes, affecting 19,637 establishments. In Germany in the same year there were 3,328 strikes, affecting 16,246 establishments; in Great Britain, 486 strikes and lockouts. Russia had 1,765 strikes in ten years. Arbitration as a remedy has not met expectations. Of the 547 strikes in Massachusetts in the three years ending with 1908, only twenty-three were settled by arbitration, four per cent, one in twenty-five. Of very close to 14,000 strikes in the United States in five years, less than two per cent were so settled. Yet long after the agitation for arbitration began in the middle of the last century, enthusiastic reformers thought it the panacea for labor troubles. When in England they began working for it, they seem to have thought it the idea embodied in the Conseils de Prud 'hommes, the industrial tribunals created by Napoleon when at the height of his power. These

have indeed for a hundred years served France admirably, but their success has been due to the reason that they concern themselves only with shop disputes where the facts can be known. It was supposed their principle was put into Lord St. Leonard's Act of 1867 and the Arbitration Act of 1872. Under these two laws, however, not a single application was ever made, and in 1896 the present plan was substituted, being a mild measure for voluntary conciliation and arbitration. This brought about in the next seven years the settlement by arbitration of an average of twenty-two cases a year, about three per cent of all the strikes and lockouts.

In this country New Jersey and Pennsylvania led the way, being followed by Massachusetts in 1886 with the creation of its present Board of Conciliation and Arbitration, largely due to the interest of Senator W. L. Douglass, afterward Governor. Great hopes were entertained of it. Yet it has not ended strikes, has not even conspicuously lessened industrial warfare.

The reason is not far to seek. There are two classes of disputes in industry, one relating to things that have happened, one relating to things that are to come. By far the greater number of strikes concern things that are to come, such as wages and hours. Arbitration is all right when the past is concerned, almost always sure to fail when the future is concerned. Arbitration means reference to an umpire with an obligation to be bound by the decision, a voluntary obligation here, a compulsory obligation in New Zealand. A decision on the basis of known facts will be accepted as it is in the case of lawsuits. There one party is right and the other wrong. But when the future is in issue, both parties may be right. The employer, for instance, may be within his rights when he says he cannot afford to pay more than two dollars a day; the employee may be equally justified in saying he cannot afford to take less than two dollars and fifty cents. The solution must be a bargain, not a decision, for a decision implies a basis of known facts. Men will not consent that third parties shall make bargains for them. Furthermore, in the case of a sympathetic strike there is literally "nothing to arbitrate." Voluntary arbitration, then, should be retained for cases such as the interpretation of a contract, where the facts can be ascertained. Many shop agreements now provide for arbitration of this sort. But for disputes relating to the future the remedy is to be sought elsewhere.

Compulsory arbitration, as attempted in Australasia, will in all probability not be tried here in our time, for two reasons: first, it is contrary to American conceptions of individual liberty; and secondly, it is based on an economic fallacy—the notion that wages can be fixed by law, for that is what it amounts to. That was attempted nearly six hundred years ago, by the Statutes of Laborers, after the Black Death carried off half the population of England. It has been elsewhere tried since, always with failure and disaster in its train. No judge, no legislature is competent to prescribe what an employer shall pay a workman. No employer will consent to wages that spell ruin; no workman will accept wages less than he can earn elsewhere. Compulsory arbitration, therefore, is not the thing here to be tried.

Study of the problem in the light of experience brings into relief two of its phases: First, it becomes clear that remedies so far tried have been in large measure spoiled by the fact that they were applied after the disputants had become embroiled, after war had been declared, after the battle was on, when passion had embittered the situation, when pride had made conference useless and concession impossible. These remedies mean the pound of cure instead of the ounce of prevention.

Secondly, it becomes clear that there are three parties to every industrial dispute, the public being a third party. When Charles Francis Adams began urging this seven or eight years ago, he was met even by men of intelligence with the argument that only employer and employee were concerned, and that it was the business of nobody else. For the state to interfere in a private quarrel, was thought preposterous. Now men are coming to see that every quarrel affecting commerce or industry, involves the prosperity of the community, and that neither the wage-earner nor the wage-giver has a right to injure his fellows in order to better his own condition unfairly. It is now seen that every strike injures the public; some strikes do serious injury. For instance, a despatch to the Boston "Herald," of February 7th, said that the expense of the Ludlow strike to the little town amounted to $8,500, and taxes would be raised. "The merchants have felt it severely and it will take many of them some time to get on their feet again."

The Lynn lasters' strike of October, 1908, starting because twenty men assemblers were replaced by twelve girls, threw out of

work 12,761 men and women employed in sixty-seven establishments, and lost to Lynn the making of 1,136,344 pairs of shoes that would have had a selling value of $1,715,766. It at any rate hastened the departure of two factories, one of which went out of the state, and it has been announced that the factory in which the trouble started will this summer be removed.

Late in 1906 these considerations set W. L. Mackenzie King a thinking. He was a young, earnest, vigorous, thoughtful Canadian, in the service of the government, sent in the course of duty to the province of Alberta to see if he could settle a big coal strike. He found employer and employee equally obdurate. Meanwhile the people froze. He came back convinced of the two things I have emphasized—that the public as a third party has the right to compel measures likely to secure industrial peace, and that they should be resorted to before rather than after the outbreak of hostilities. So there came about the passage of the Canadian law for the investigation of industrial disputes—to-day the most promising remedy for the evils of industrial warfare.

The Canadian Act requires that in the event of a dispute arising in any industry known as a public utility, it shall be illegal to resort to a strike or lockout until the matters in dispute have been laid before a board of investigation. Such a board is appointed by the Minister of Labour on the application of either party. One of its members is named by the employer; one is named by the employees; these two choose a third, or on their failure to agree, he is named by the minister. The proceedings and final report are at once published extensively, for their influence on public opinion. After the report, and not until then, the employer may lock out or the employees may strike, if either declines to accept the advice of the board.

Harris Weinstock in January of this year made to the Governor of California his report of fifteen months of investigation of labor laws and conditions in Europe and Australasia, as a special labor commissioner. He found that voluntary arbitration was largely a failure the world over, and concluded that compulsory arbitration would not fit the conditions of California. Before learning of the Canadian law he had reached the opinion that "an important stride would be made in the direction of industrial peace, if legislation was created calling for a public inquiry in labor disputes before

they had reached the serious stage of strike or lockout." Thus quite independently he hit upon the principle already applied in Canada. He has advised the passage of a law along precisely the same lines, restricted to public utilities.

Dr. Victor S. Clark has made for the United States Bureau of Labor two thorough and conservative reports on the Canadian law, one appearing in the Bulletin for May, 1908, and the other in that for January, 1910. In the conclusion of the later report he says: "Under the conditions for which it was devised, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention."

Observers watching the actual results of the principle as applied in Canada have sought its application elsewhere. It has been copied in the Transvaal. In the United States attention was called to it by articles of strong praise by President Charles W. Eliot. Campaigns for its introduction are under way in several American states. Those active in the fight feel confident of ultimate victory; for, thanks to Canada, they have at command the arguments of experience. "The proof of the pudding is in the eating."

In the first three years of the operation of the Canadian law (March, 1907-March, 1910) eighty-two applications were received for the establishment of boards of conciliation and investigation, as a result of which seventy-four boards were established. In sixty-eight out of the seventy-four cases referred for investigation, the inquiry resulted either in a direct agreement between the parties, or in such an improvement of relations as led to the settlement of the dispute. In two of the cases where reference under the act was not successful in either averting or terminating a cessation of work, the men finally returned on the terms recommended by the board.

In the ten years prior to the enactment of the Canadian law there were 100 strikes in public utilities—an average of ten a year. In the three years after its enactment the average fell to two a year. In every single case where the question was one of wages, hours, or conditions of employment, investigation prevented strike or lockout. Altogether nearly 60,000 employees were directly concerned in the disputes settled. Had strikes not been thus avoided, it is estimated they would have lost $3,500,000 in wages.

Compulsory investigation secures such remarkable results because it is based on common sense and human nature. Notice of grievance acquaints the other side and gives chance of concession before the parties get embroiled. Calm inquiry discloses with some accuracy the points in dispute, ignorance or misunderstanding of which has led to many a costly strike. It nips trouble in the bud. As things go now, once hostilities have begun, false pride forbids either party to retreat. Then original causes are forgotten in the new grievances that friction develops. The new plan prevents hasty, rash action, gives chance for inflamed passions to cool, for angry words to be forgotten. Most important of all, it brings the disputants face to face, lets them talk it out, gives them a chance to be heard. Experience in Canada shows that with the disputants on opposite sides of the same table, with no lawyers present, with the reporters excluded, and with dispassionate investigators directing the conference, an atmosphere of good will is soon created, suspicions are allayed, concessions are encouraged. After the investigators have given their advice, if it is accepted, there is no more resentment, malice, spite, no consciousness of humiliating defeat by overpowering strength, no desire for vengeance.

The great value of the law lies in its providing a negotiating rather than a deciding body, thus preventing strikes by bringing the parties to a voluntary settlement. Its real worth does not lie in holding over them any sort of a club in the nature of a penalty, whether moral or otherwise. In practice the penalties have been found unimportant. Most workmen and most employers want to be law-abiding citizens. If the state says they must not strike or lock out until after investigation, most of them will comply regardless of penalty. The others, few in number, would probably evade any law that could be written. Employers can evade this law by shutting down on some pretext. Employees can evade by the runaway strike, vanishing one at a time. The answer is that in Canada as a matter of fact they do not.

In this respect as in other particulars public opinion largely controls the situation. Fear of it incites both sides to comply with the spirit of the law. Fear of it keeps either side from asking investigation of an unjust position. Fear of it impels each party to make reasonable concessions. Publicity compels fair play.

The Dominion Trades and Labor Congress, the most influential

labor body in Canada, is probably the best exponent of labor sentiment throughout the Dominion, and carries most weight with political parties. Its president is a member of Parliament. The following report by the executive officers was made to the congress at the Winnipeg session:

"The Trades Dispute Investigation Act, 1907. Your executive, after careful consideration, gave its hearty endorsation to the principles of the bill. Organized labor does not want to strike or enforce its demands if the consideration of them can be attained without recourse to this remedy. The strike has been our last resort, and as the bill continued our right to strike, but assured a fair hearing of the demands of the workers, there was nothing to do but to give our support to it. Nor is organized labor blind to the fact that in every great industrial struggle the public have a large interest as well in the result as in the means adopted to reach that result. The least the public are entitled to is a knowledge of the merits of the dispute. This knowledge will be given to them under the procedure outlined in the bill. Your executive believes it will be a happy day when every labor dispute can be settled by the parties meeting together in the presence of an impartial tribunal to discuss their differences. Our great difficulty in the past has been that we could not get a hearing."

After debate in which twenty of the delegates, including executive officers, took part, the following resolution was adopted by a vote of eighty-one to nineteen:

> WHEREAS, Organized labor has from time to time expressed its disapproval of strikes except as a last resort in industrial disputes; and, whereas, particularly in disputes in connection with public utilities the public have rights that must be respected and considered; and, whereas, the Lemieux Bill is designed to avoid strikes and lockouts, in connection with industrial disputes, in certain public utilities, until such time as the merits of the dispute are publicly investigated; and, whereas, organized labor always courts investigation of its grievances by reason of the justice of its claims and its desire to be fair;
>
> *Resolved*. That this Trades and Labor Congress of Canada hereby express its approval of the principles of the Lemieux Bill as being in consonance with the oft-expressed attitude of organized labor in favor of investigation and conciliation.

A proposal to have the act amended so as to exempt the employees of both steam and electric railways was voted down. The

big organizations of railroad men in Canada were at first sceptical about the law or openly hostile. Now the railroad men are practically a unit in its support, doubters not being plenty enough to take into account. Indeed the only serious opposition to the law that remains among those with practical experience, is found on the part of some of the mining unions so dominated by socialistic beliefs as to be hostile to any remedies not based on the principles of socialism.

Another labor organization, the National Trades and Labor Congress, heard this from its Executive Committee at Quebec after the law had been in force almost a year and a half:

"No legislative enactment since confederation has had so immediate and far-reaching an influence upon organized labor in Canada as the Industrial Disputes Investigation Act of 1907, known as the Lemieux law. From the official reports of investigations of disputes under the act, from its enactment March 22, 1907, to the present time, the majority of the unions involved have expressed satisfaction with the award, and as a result, the principle of compromise, so powerful a factor in society as it is constituted to-day, has been recognized, the duration of strikes has been reduced, large strike funds have become less important as a fighting weapon, and outside interference has not only become unnecessary, but even a cause of loss of public sympathy."

The Secretaire General of the Parti Ouvrier du Canada writes:

"The law is certainly a good one and has proved so in many cases, because it gives the workingman the opportunity of bringing his complaints and his real situation before the general public. Furthermore, the law has recognized the official existence of labor organizations, and has prevented many strikes and lockouts. I am one of those who really believe that this law ought to be made compulsory to all employments. If it is a good law for some industries, it ought to be good also for all."

The Grand President of the Canadian Brotherhood of Railroad Employees writes:

"The law as it stands is in my opinion a good one. The only change I could suggest, which would be of advantage, would be to widen its scope to take in all classes of employment."

The Grand Secretary of the Provincial Workmen's Association writes:

"I think it is wise legislation. I have had some little experience with it all over this province, and the more I see of it, the more I am impressed with its fairness to both parties of the dispute. I do not think it would hurt the parties to any dispute to have public investigation into the cause of the dispute."

On the advice of the Canadian Minister of Labour and a majority of the many Canadians with whom correspondence was instituted, we drew the bill for Massachusetts to apply to all industries, instead of confining it to public utilities as in Canada. After test of it there for some months the Dominion Trades and Labor Congress, the most influential labor body in Canada, voted by fifty-nine to twenty-two to ask that it be extended to cover all industries. The Canadian Federation of Labor at its convention last fall passed a similar vote, and in accordance therewith a delegation headed by the president of the Federation, laid the request before the Minister of Labour, who expressed his sympathy with the idea. His own view was that a beginning in the way of extension might be made by including the building trades within the operation of the act, these trades being, as he believed, to a large degree within the meaning of the term "public utilities." It was his purpose to extend the law into other occupations as fast as feasible.

It has been suggested that in some of our states it might not be constitutional to have the law apply to all industries, though undoubtedly valid for public utilities. The best authority sees no difficulty on this score. The bill does not propose to make it unlawful for an employer to discharge a man or for an employee to quit work. What it does do is to declare the purpose of lockout or strike unlawful, prior to investigation. Our courts have held that an innocent act may be made unlawful because of its purpose. A strike is concerted action with a purpose, and concerted action may make an innocent act unlawful. There is no reasonable doubt that under the police power we may prohibit concerted action, if its result would be to disturb the public peace or injure the public welfare, or indeed could prohibit individual action if it threatened such result.

It was not the purpose of the bill drawn for Massachusetts to abolish the State Board of Conciliation and Arbitration. It was meant simply to add the function of compulsory "investigation." Another bill, introduced on the petition of President Eliot and

George B. Hugo would in practice have resulted in the speedy abolition of the Board of Conciliation and Arbitration, and such was understood to be the object of its backers. This did not seem to some of us prudent or desirable. Arbitration is occasionally available and ought to be retained. Furthermore many shops in Massachusetts are now working under agreements to refer disputes to the state board for arbitration and it would be a pity to interfere with this practice. So our bill would keep the state board at the command of those who are willing to arbitrate.

The Canadian law creates a special investigating board for each dispute, partly because Canada is so large that a central body could not handle everything from Halifax to Vancouver. A permanent board would be more economical, its members would have the advantage of experience, and in more or less cases it would be acceptable. To combine the merits of each method, we provided that the disputants might have a special board or use the state board, as they should elect.

Organized labor in Canada was apprehensive that under their law as written, employers could evade the spirit of it by massing strike breakers in anticipation of an unfavorable opinion from the investigating board. So the Dominion Trades and Labor Congress asked certain changes in phraseology to meet this, and they were incorporated in the Massachusetts bill. Otherwise our bill followed the Canadian law as it stood, with some changes to conform to Massachusetts practice. It was passed on by the Canadian Minister of Labour, and only changes meeting his approval were made.

Our experience in the first attempt to enact the principle of the Canadian law in Massachusetts, may be instructive. At one time it looked as if the measure would pass without serious opposition. Then both employers and employees began to magnify dangers to selfish interests. The leaders of the unions woke up to the fact that the bill meant to them the loss of the power given by the sudden blow. They swiftly spread throughout the ranks the belief that strikes were to be made crimes. Impassioned orators crowded the committee room with denunciations of this treacherous plot to throttle organized labor. Most careful explanations of the law fell on deaf ears. It was in vain that the hearty words of approval written by Canadian labor leaders were read again and again. It was of no use that proof was brought of the desire of organized

labor in Canada that the law shall be extended to cover all industries. The workers became convinced that their cause was attacked, and they refused to believe that men not of their numbers could really have their interests at heart.

On the other hand, certain employers at the head of large non-union shops, content with their own success in warding off what they deem the aggressions of labor, discovered a chance that the law would interfere with their discipline and might compel them to negotiate with their workmen. Unfamiliar with the merits of collective bargaining, exaggerating its defects, accustomed to exercise the authority of dictators, they resented the suggestion of any measure of control in the public interest. One of them saw in a bill meant to protect and relieve and help the employer just as much as the employee, one more handicap on Massachusetts industries in their competition with those of other states. Another saw in it the opportunity for one manufacturer to pry into the books and learn the trade secrets of his competitor. Still another was apprehensive lest the law might foment labor troubles and incite his employees to make demands, on the ground that they had nothing to lose and a chance to gain. Still others argued that as they were themselves getting along all right with their men, it would be better to let well enough alone.

The proofs from Canada that their apprehensions were bugaboos, that the law had not in fact stirred up strife, that trade secrets had not been disclosed, that all parties had distinctly gained, that peace had been encouraged and strife lessened—all fell on ears just as tightly closed to the lessons of experience as those of the union leaders. So it became clear that no speedy acceptance of the truth was possible, but that one more long, hard and costly campaign of education must be carried through before common sense can prevail.

Proud as one may be of the governmental processes of the United States, such an episode can hardly fail to make one uncertain as to whether they are after all distinctly superior to the system of ministerial responsibility to which England and her colonies are accustomed. In Canada a small group of men—the ministry—became convinced that Mr. King was right and that his solution of the strike problem was sane and practicable. They took the responsibility for putting it into law and the issue justified them. Once

well tested, employers and employees alike approved and accepted it. Here, on the other hand, we must convince employers and employees and public—thousands on thousands of persons—before a test can be made. We must conquer a myriad of fears and alarms, a multitude of misconceptions. While other countries act, we talk.

Doctor Clark is of the opinion that the adoption of a statute similar to the Canadian law in any state or by the United States Government, whether desirable or not, is likely to be opposed by organized labor, and probably could be secured only after some industrial crisis profoundly affecting public opinion had centered popular attention upon the question of strike prevention. This may be true, and yet it is of importance that those who already appreciate the need of action shall without waiting for emergency take every opportunity to encourage accurate and rational discussion of the problem. It may take time, but in the end the justice and the expediency of industrial peace will alike appeal to those who create the opinion on which law is based. Peace is to the interest of all parties, peace with honor, and that is what compulsory investigation gives. It promises wage-earners a chance for fair play. It promises the employer security. It means for industry what the tribunal at the Hague means for the nations.

THE CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT

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In laying a statement concerning the origin and operation of the Industrial Disputes Investigation Act 1907 before the readers of this publication, who, it may be presumed, are very generally citizens of the United States, it may not be out of place to dwell for a moment on the essential differences, from the legislative point of view, between the United States and its northern neighbor; the reader may be thereby enabled the better to appreciate the political atmosphere of environment of the Canadian law and to estimate how far this may affect the question of the applicability of the measure to other political systems.

The government of Canada, like that of the United States, is federal in character and based on a written constitution. Under the letter of its constitution, the Dominion possesses relatively less power than the American constitution gives the government of the United States; in practice, owing to the greater elasticity of its political system, which is modeled closely on that of Great Britain, the federal power in Canada is considerably stronger than that of the United States, excluding, of course, all relation to such functions as are, in the case of Canada, exercised by the British government. The chief difference in the political systems of the two countries lies in the acceptance in Canada, as in England, of the doctrine of ministerial responsibility. This theory requires the heads of the various departments of the Canadian government—who are also the political party leaders—to occupy seats in Parliament, compels them to keep in the closest touch with the parliamentary representatives of the party in power, and affords them in most cases a greatly longer period of political life and influence and a proportionately larger scope for the play of personality, than is possible in the case of the members of the United States Cabinet, who are without seats in either branch of the legislature, and whose political lives seldom extend beyond the

term of the President whom they serve as administrative assistants or auxiliaries. It is not material to the purpose of the present paper to determine which of the two systems may ultimately and in the largest sense prove the better; it is intended only to indicate the influence which tends to give the federal power in Canada a strength and elasticity with which the United States system cannot be invested. Whether or not these conditions make for the ultimate good of the community to be governed, is a separate proposition; but there can be no doubt that when the question at issue is one which touches that borderland, or, as it has been called, "twilight," that lies between or jointly affects federal and local jurisdiction, the Canadian system gives the advantage to the federal power.

So it is that in the case of legislation relating to industrial disputes, although there is theoretically little difference in the powers in this direction of the two governments under comparison, it has yet been possible to enact in Canada a federal measure which may not be regarded as falling within the sphere of federal jurisdiction in the United States.

With this brief and inadequate comment on the difference between the political systems of the two countries concerned, we may proceed with a more direct discussion of the subject of the paper. The first Dominion statute dealing directly with the question of the settlement of industrial disputes was that of 1900, known as the Conciliation and Labour Act. This act, by virtue of which also the Department of Labour of Canada was itself established, was modeled closely on the Conciliation Act of Great Britain. Under its terms the department was enabled, with the consent of the parties concerned, to intervene with advantage in numerous industrial disputes. The intervention was effected, however, by the Deputy Minister of the Department in person, and not by means of conciliation boards after the method for the most part followed under the English Act and, it may be remarked, contemplated under the Canadian Act; sentiment has not, in the United States or Canada, favored the growth of voluntary conciliation boards as in the industrial districts of Great Britain.

While many disputes were, and might have continued to be, amicably arranged under the terms of the act in this way, it was obvious that many occasions might arise where the services of departmental officials would be unavailable or inadequate for the

settlement of industrial disputes, and, apart from other necessities, some further development of the law of 1900 would have been desirable and natural in the ordinary course of events. In 1903, the Railway Labour Disputes Act was enacted, which permitted the establishment of a board of conciliation in the case of a railway dispute when one of the parties to such a dispute applied for the same; this was, of course, a step further than the Conciliation and Labour Act went, but the right to strike or lockout, instead of resorting to the method of adjustment provided by statute, was not affected. A further advance was no doubt hastened by means of a serious object lesson in the winter of 1906-07. Throughout nine months of the year 1906 a strike had prevailed in coal mines located at Lethbridge, Alta., colleries which supplied fuel to a large district of the western prairie country; the strike continuing until the approach of winter, serious apprehension came to be felt as to the supply of fuel. Eventually in mid-November, the Prime Minister of the Province of Saskatchewan requested the intervention of the Department of Labour. The Conciliation Act, it should be said, permitted the intervention of the department only by consent of both parties, and in the case of this coal mining dispute the department had been informed by the employers that they were averse to intervention. The demand for intervention being now made in the public interest and by the leader of a provincial government, it was considered proper by the department to take action. Mr. W. L. Mackenzie King, the Deputy Minister at that time, immediately proceeded to Lethbridge, and after considerable negotiation succeeded in securing an agreement between the coal company and its employees, the alarming situation in reference to the fuel supply having an appreciable influence in bringing about a more conciliatory attitude in the case of both parties. It was as the outcome of this dispute, and because of recommendations made by the Deputy Minister of Labour in his report of the enquiry into the dispute that the Industrial Disputes Investigation Act was enacted somewhat later in the same winter of 1906-07.

Hitherto, the only alternative to conciliation as a method of adjusting industrial disputes had been compulsory arbitration, which, of course, finds vogue in the Australasian states. As an experiment in social legislation, compulsory arbitration in these countries has been a matter of surpassing interest to students of

economic problems, but it is not yet clear that this legislation is even substantially effective. The period during which compulsory arbitration has ruled in these countries has been on the whole one of rising prices and rising wages, and the outcome of enquiries into disputes has usually been the increase of wages paid to employees. In spite of this, there have been numerous strikes, and the enforcement of the penalty in each case has been found a matter of extreme difficulty, if not of admitted impossibility. The experiment in compulsory arbitration is, moreover, of too limited a character, both as to time and territory, and the industrial conditions of the territory covered have been of too exceptional a character, to allow of the test so far made to be regarded, especially at this distance from the scene of action, as decisive, whether for or against the principle. It is impossible to say with any preciseness what may have been the result of the compulsory feature of the law as a preventive of industrial strife. It is well also to bear in mind, in considering the cases of Australia and New Zealand with regard to legislation of this nature, that these countries are in a position of peculiar independence and even isolation in industrial matters, differing widely in this respect from the industrial countries of Europe and North America, which are all keen competitors one with another. The view gradually formulated in the Department of Labour of Canada, and apparently endorsed by the Canadian public, was that industrial disputes should be separated into two classes, those in which the average citizen is directly affected or liable to be affected in his own person, so that the grievance may relate to an entire community; and those in which the average citizen is only remotely or indirectly concerned. A strike of coal miners, railway men or telegraph operators, of gas or electric light fitters or of street railway employees may be, for instance, the means of bringing confusion and disaster on an entire community; a strike in a cotton mill or a shoe factory, on the other hand, affects the printer, plumber or professional man, the general public in fact, only so far as it may serve to depress commercial conditions in a particular district. On this point, the Deputy Minister of Labour in his report on the Lethbridge mines difficulty, remarked as follows:

> When it is remembered that organized society alone makes possible the operation of mines to the mutual benefit of those engaged in the work of production, a recognition of the obligations due society by the parties is

something which the state is justified in compelling if the parties themselves are unwilling to concede it. In any civilized community private rights should cease when they become public wrongs. Clearly, there is nothing in the rights of parties to a dispute to justify the inhabitants of a province being brought face to face with a fuel famine amid winter conditions, so long as there is coal in the ground, and men and capital at hand to mine it. Either the disputants must be prepared to leave the differences which they are unable to amicably settle to the arbitrament of such authority as the state may determine most expedient, or make way for others who are prepared to do so.

What I know of conditions in the Canadian West leads me to believe that the labour troubles in the mines which this country has been forced to witness during the present year, will not be without repetition, at some future time, unless, and this, I fear, is improbable, the attitude of the parties towards each other becomes vastly different from what it has been in the past, or some machinery is devised by the state—either the federal or provincial government—whereby the parties will be obliged to refer to an impartial tribunal such differences as failing an amicable adjustment, are likely to lead to a lockout or strike.

It may be well here to include the precise recommendation of Mr. Mackenzie King on the question of legislation, since the same embodied the basis of the law subsequently enacted. Mr. King's report closed with the following sentences:

The purpose of Parliament in enacting both the Conciliation and the Railway Disputes Act might, it seems to me, be considerably furthered were an act, applicable to strikes and lockouts in coal mines, similar in some features to the Railway Labour Disputes Act also enacted. Inasmuch as coal is in this country one of the foremost necessaries, on which not only a great part of the manufacturing and transportation industries, but also, as the recent experience has shown, much of the happiness and life itself depends, it would appear that if legislation can be devised, which, without encroaching upon the recognized rights of employers and employees, will at the same time protect the public, the state would be justified in enacting any measure which will make the strike or lockout in a coal mine a thing of the past. Such an end, it would appear, might be achieved, at least in part, were provision made whereby, as in the case of the Railway Labour Disputes Act, all questions in dispute might be referred to a board empowered to conduct an investigation under oath, with the additional feature, perhaps, that such reference should not be optional, but obligatory, and pending the investigation and until the board has issued its finding the parties be restrained, on pain of penalty, from declaring a lockout or strike.

In view of past experience and the present situation, I would, therefore, respectfully recommend that the attention of Parliament be, at as early a date as possible, invited to a consideration of some such or other measure

with a view to preventing a possible recurrence of an experience such as this country has been forced to witness during the past month, and of promoting in the interests of the whole people the cause of industrial peace.

With regard to the respective proportions numerically of strikes in the domain of public utilities and in other classes of labor respectively, the experience of Canada had shown that the public utility class involved a large proportion of the total number. Taking the six years prior to the period when the new legislation was recommended, it was found that the total number of work people affected by strikes in Canada was 142,027, of which exactly one-third represented disputes in mining, transportation, street railways, telephony, and telegraph. The Deputy Minister's recommendation was subsequently elaborated into a bill which was presented to Parliament by the then Minister of Labour, the Honorable Rodolphe Lemieux, during the session of 1906-07, and having passed through both Houses became law on March 22, 1907. The fact that the bill was piloted through Parliament by the Honorable Mr. Lemieux as Minister of Labour has led to the measure being widely known as the "Lemieux Act." As will have been gathered from the foregoing quotations from the Deputy Minister's report, the principal feature of the measure was the provision that a lockout or strike might not legally take place in connection with any mining or public utility industry until after an investigation had been made into the subject of dispute and every reasonable effort had been made to bring the parties concerned to an agreement.

It is not perhaps necessary to make more than a brief reference to the machinery of the act. The board before which the compulsory enquiry takes place is composed of three persons, one recommended by each of the disputing parties and appointed by the Minister, the third recommended jointly by the two members first appointed, or if a joint recommendation from them is impossible then the third member is selected and appointed by the Minister. If either party fails to nominate a person to the board within the period of five days after being requested by the Minister to do so, or within such extension of that period as the Minister may, for reasons stated, allow, the Minister is then required to make the necessary appointment without a recommendation, though it is obvious that in such a case one of the leading factors in conciliation is lacking. The act further prescribed that thirty days' notice should

be given in the case of either employer or employees before any change affecting wages or general conditions of work could go into effect. It should be noted that during the recent session of Parliament this last provision of the act was amended so as to provide that such changes may not take place "until the dispute has been finally dealt with by a board." Application forms are supplied by the department on request, though it is not necessary that applications should be confined to such forms, but the application must be, in any event, accompanied by a statement setting forth (1) the parties to the dispute; (2) the nature and cause of the dispute, including all claims and demands made by either party on the other to which exception is taken; (3) an approximate estimate of the number of persons affected; and (4) the efforts made by the parties themselves to adjust the dispute. The law requires further that the application should be accompanied by "a statutory declaration setting forth that failing an adjustment of the dispute or a reference thereof by the Minister to a Board of Conciliation and Investigation under the act, to the best of the knowledge and belief of the declarant a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained." This last provision has been quoted somewhat fully because the act has been in this respect also the subject of a slight modification during the recent session of Parliament. Representations had been made repeatedly by railway men to the effect that in obtaining the authority to declare a strike or lockout over a line of railway several thousand miles in length, much expenditure of money and time was necessitated, and that the act in this respect bore severely on the class of labour indicated. The act was therefore amended in this respect so as to provide that where a dispute concerned employees in more than one province there should be an alternative procedure free from these objections. So that both parties to the dispute may be made acquainted with the proceedings taken under the act at the earliest moment possible and all unnecessary delay prevented, the applicant for the establishment of a board is required to send to the other party to the dispute a copy of the application at the same time the latter is transferred to the department, and the second party to the dispute is similarly required to prepare without delay a statement in reply and forward the same to the department and to the other party to the dispute. The act is

precise in indicating who shall be regarded as properly representing the various parties making application for the establishment of boards. Upon the establishment of a board, the department is required to forward to the chairman a copy of the application received and of the statement received in reply. In the course of the investigation that follows the board may make all suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and if a settlement of the dispute is reached by the parties during the course of its reference to the board, a memorandum of the settlement is to be drawn up by the board and signed by the parties and may be made binding if the parties agree as provided by a subsequent section of the act, and a copy of the memorandum, with a report on the proceedings, is to be forwarded to the Minister. If a settlement of the dispute is not arrived at during the course of its reference to the board, the board is required to make a full report thereon to the Minister, and make such recommendation as it sees fit for the setttlement of the dispute; and when it is deemed expedient to do so, is also to state the period during which the proposed settlement shall continue in force and the date from which it shall commence. This report is to be sent to the registrar, and similarly, a minority report may be made by a dissenting member of the board. The board is invested with all necessary powers for summoning and enforcing the attendance of witnesses, the administering of oaths and otherwise, so far as may be necessary to a full investigation of the matters brought before it. The board has further the right to investigate and to allow those whom it may indicate to investigate all books, documents, etc., brought before the board, but the information contained therefrom shall not, except in so far as the board deems expedient, be made public. The act makes all necessary provision for the payment of witnesses, and for imposing penalties where the summons or order of the court has been disobeyed or where any person may be guilty of contempt to the board. The board is further invested with power to enter or to authorize others to enter any premises associated with the dispute which has been referred to it, and may there pursue its investigation.

Any party to a reference may be represented before the board by three, or less than three persons designated for the purpose, or by counsel or solicitor where allowed, and such counsel or solicitor

shall be entitled to appear or be heard before the board only with the consent of the parties to the dispute, and, notwithstanding such consent, the board may decline to allow such appearance.

Members of the board must be British subjects, though not necessarily residents of Canada. The sittings of the board are fixed as to time and place by the chairman, and the proceedings conducted in public, unless the board of its own motion or by request of any party to the dispute direct that they be held in private. The board may at any time dismiss any matter referred to it which it deems frivolous or trivial; also it may, with the consent of the Minister of Labour, employ any competent experts or assessors to examine the books or official reports of either party and to advise upon any technical or other matter material to the investigation.

The act provides for the adequate payment of the members of the board during the time they are employed on the task in hand, also for their necessary traveling expenses, and further expressly prohibits the acceptance by any member of the board of any perquisite or gratuity apart from his remuneration by the government on account of any matters brought before the board and makes the acceptance of such perquisite or gratuity an offence punishable by a fine not exceeding one thousand dollars. The compensation for members of the board was originally placed at twenty dollars a day for the chairman and fifteen dollars a day each for other members. During the recent session of Parliament, however, the act was amended by increasing the fee in the case of each member of the board to twenty dollars daily.

The penalties prescribed by the act are as follows: Any employer declaring or causing a lockout contrary to the provisions of the act becomes liable to a fine of not less than one hundred dollars, nor more than one thousand dollars, for each day or part of a day that such lockout exists; while any employee who goes out on strike contrary to the provisions of the act becomes liable to a fine of not less than ten dollars nor more than fifty dollars, for each day or part of a day that such employee is on strike; also, any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of the act, shall be guilty of an offence and liable to a fine of not less than fifty dollars and not more than one thousand dollars. It may be added that the act does not con-

template that the Department of Labour should institute proceedings when the act is believed to be infringed; any individual may lay the information necessary.

The text of the award of findings of the board in each case is published in the "Labour Gazette," the official monthly publication of the Department of Labour, and the findings received during a given official year are published collectively in the annual report of the department.

It has been found in the experience of the department that the act is much more effectively worked when free, so far as possible, from the formal procedure suggestive of the ordinary judicial court. The taking of sworn evidence, with stenographers' reports, has been particularly discouraged as having proved far from conducive to an amicable adjustment of differences, apart from the inevitable delay associated with such procedure and leaving out of account also the very considerable expense involved in it.

The most obvious virtue of the act lies, it will be seen, in bringing the parties together before three fellow citizens of standing and repute, one at least of whom is a wholly disinterested arbiter, where a free and frank discussion of the differences may take place and the dispute may be thrashed out in such a manner as is frequently quite impossible as between the disputants directly. Grant that such discussion and investigation take place before a strike or lockout has been declared and that the board acts with ordinary discretion and tact, the chances are largely in favor of an amicable adjustment of the differences at issue. Much, of course, depends upon the chairman, and it is a *sine qua non* that he shall be a gentleman whose reputation both as a practical man and as a man of judicial bearing shall command respect on the part of the disputants and of the public generally. The experience of the Canadian act has shown that in somewhat less than half of the cases referred under the act, the parties themselves will agree on a chairman; in the remainder the appointment has been made by the Minister of Labour.

Apart from the advantage of thus bringing the parties together before a board, the act invokes the factor of publicity, and this has proved a weighty instrument in averting extreme methods on the part of employer or employees. There is, first, the publicity involved in the investigation itself; as a rule a disputant does not desire to

submit for investigation a case which is obviously unfair, and the impending investigation leads, therefore, to the abandonment of extreme propositions or contentions. There is, secondly, the publicity involved in the publication of the official report and frequently of newspaper reports of proceedings, though the latter may be limited by the action of the board. The publication of the official findings of a board on a given dispute acquaints the public with the precise circumstances of the situation, enables the public to determine the degree of reasonableness or unreasonableness of either party, and practically assures in advance the defeat of action taken by either party contrary to the findings or recommendations of the board. This has been the practically invariable experience of the operation of the act in Canada, and after three years' active operation of the measure the general feeling with regard thereto is that it has easily justified its existence and that the principles on which it is based are obtaining continually a wider recognition both in Canada and elsewhere. It will be of interest to state briefly the nature of the proceedings during these years. The total number of applications under the act from the date of its enactment, March 22, 1907, to the end of the financial year March 31, 1910, a period of three years, is eighty-two, of which thirty-five were received during the first year, twenty during the second, and twenty-seven during the third. The number of employees estimated to have been affected in the eighty-two disputes is 85,500. Of the total number of applications, thirty-four related to coal mining, six to metalliferous mining, thirty-eight to transportation and communication, one to municipal public utility, and three to industries other than mines and public utilities. The special trades or callings involved included those of coal miners, silver miners, copper miners, conductors, locomotive engineers, station agents, railway telegraphers, brakemen, firemen, baggagemen, freight clerks, machinists, mechanics (including boilermakers, blacksmiths, steamfitters and gasfitters), roundhouse employees, maintenance of way employees, carmen, freight handlers, longshoremen, lake seamen, street railway employees, teamsters, municipal employees, cotton mill operatives, and boot and shoe workers.

In a very large majority of cases the matters at issue related to hours, wages, or conditions of labor, and in only two of the cases in which wages or hours were directly concerned have proceedings

under the act failed to avert the threatened strike. It was not found necessary to establish a board in the case of every application received, the compulsory feature of the act occasionally serving to effect an adjustment without the application of the full machinery; during the three years six disputes were settled in this manner.

There have been in all during the three years indicated six instances in which strikes have occurred after the reference of disputes under the terms of the act. One of these six disputes concerned the railway industry; the other five related to the mining industry, and in four cases had to do in whole or in large part with the question of alleged discrimination against or the recognition of labour unions. The six cases in question are as follows: (1) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees; (2) Canadian Pacific Railway Company and its mechanical employees; (3) Nicola Valley Coal and Coke Company, of Middlesboro, B. C., and its employees; (4) British Columbia Copper Company, of Greenwood, B. C., and its employees; (5) Dominion Coal Company, of Glace Bay, N. S., and its employees; and (6) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees. In No. 1, the strike lasted from August 1, 1907, to August 31, 1907, when the employees returned to work on the conditions recommended in the report of the board. In No. 2, the strike lasted from August 5, 1908, to October 5, 1908, when the employees returned to work on the conditions recommended in the report of the board. In No. 3, the employees went on strike on April 28, during the process of establishing a board, and returned to work early in June on lines recommended by the board. In No. 4, the strike lasted from June 28 to July 24; in this case three reports were put in by the members of the board, and the settlement was on the lines substantially of the chairman's recommendations. In No. 5, the strike lasted from July 5, 1909, to April 28, 1910, when the employees returned to work on lines recommended in the report of the board, with such modifications as had been made in the same by an agreement subsequently effected with the men who had refused to participate in the strike. In No. 6, the strike was declared on August 9, 1909, and was continuing at the date of writing; it should be noted that the parties concerned in Nos. 1 and 6 are identical. During the three years, however, there have been several instances in which strikes in industries affected

by the act have been declared without reference to the law, although in most of these cases a board has been subsequently established; and in no instance where a board has been established under such circumstances has it failed to secure an adjustment. The industries affected have been usually those of coal miners or longshoremen.

Much interest has been taken in the act in foreign countries, and particularly in the United States. The question of the degree of benefit resulting from the operation of the act in Canada and of the applicability of its provisions to industrial disputes in the United States has been for several years a favorite subject of debate in high schools and colleges throughout the United States and innumerable requests have been received in the department for information on the subject. Requests for addresses from those who have been concerned in the administration of the act have also been frequently received, and Professor Adam Shortt, formerly of Queen's University, Kingston, now a civil service commissioner at Ottawa, and who was chairman of numerous boards established during the first eighteen months of the life of the act, has frequently by request addressed gatherings in Canada and in the United States as to the principles and operation of the act. It may be worth quoting at this point some sentences from an address given by Professor Shortt before the American Association for Labor Legislation at Atlantic City in December, 1908, Professor Shortt's address was not in the nature of an analysis of the act, but consisted rather of observations and deductions derived from his large experience of the practical administration of its provisions. The closing sentences of his address show concisely the character of the act and the methods by which it is induced to work most effectively:

> Considering how very seldom in their discussion of the merits of their respective cases the weaknesses of their own position and the strength of their opponents are frankly admitted, I have been agreeably surprised to find how readily in the end, even in the discussion before the board, but more particularly in the separate discussions afterwards, each side could be brought to concede the validity of their opponents' position on many points. Another encouraging feature, considering what interests are at stake, is the general calmness and good feeling which prevail in the discussions before the boards. Occasionally the temperature may exhibit a sudden rise when some tender spot is rubbed, but such occurrences are rare. Much the liveliest case we experienced, in the way of an exchange of picturesque compliments, was one in which two very respectable interna-

tional unions were seeking to establish themselves on the same base and on the same side of it with reference to a railway company.

There are many reflections suggested by the experience of the concrete cases which have been brought under the operation of the Canadian act, but only a few samples could be presented in this paper. The policy and method of the Canadian act by no means afford a certain remedy for industrial disputes. No practical man dreams that industrial disputes can be prevented from occurring, because there will always be cases where justice, unavoidably pertains to both sides. There are, however, many disputes which are chiefly due to historic prejudice, mutual ignorance and misunderstanding, and it ought to be possible to dispose of most of these and to effect a working settlement in the case of many of the others. All that one may claim for the essential features of the Canadian act is that, if tactfully handled, they provide a reasonable method of securing the maximum of concession with the minimum of compulsion.

With regard to the question of the applicability of the act to the United States, reference should be made to the special inquiry conducted on this subject by Dr. Victor S. Clark, the noted sociological writer of Washington, D. C., who visited Canada in the spring of 1908 at the special request of Mr. Roosevelt, the then President of the United States, for the purpose of making an investigation into the working of the act. Dr. Clark's report was published in the May issue of the Bi-Monthly Bulletin of the United States Bureau of Labor, where it occupied eighty pages. The report was an extremely valuable analysis of the act. Generally speaking, the findings were favorable to the measure, which had, however, it must be remembered, been in operation at the time of Dr. Clark's inquiry only one year. "So far," said Dr. Clark, "as can be judged from the experience of a single year, the Industrial Disputes Act has accomplished the main purpose for which it was enacted, the prevention of strikes and lockouts in public service industries;" and at another point the writer observes:

Apparently, it has not affected adversely the conditions of workingmen or of industries where it has been applied. It is much more applicable to American conditions than compulsory arbitration laws, like those of New Zealand and Australia, because its settlements are based on the agreement of the parties and do not prescribe an artificial wage, often illy adjusted to economic conditions. Employers and the general public in Canada, with a very few exceptions, favor the law. The working people are divided. Possibly workers do sacrifice something of influence in giving up sudden strikes, but they gain in other ways, especially in having a better alternative to a

strike than before. And as part of the general public they profit by the saving of industrial waste through strikes.

After such a law is once on the statute books, however, it usually remains, and in New Zealand, Australia and Canada it has created a new public attitude toward industrial disputes. This attitude is the result of the idea—readily grasped and generally accepted when once clearly presented—that the public have an interest in many industrial conflicts quite as immediate and important in its way as that of the conflicting parties. If the American people have this truth vividly brought to their attention by a great strike, the hopeful example of the Canadian act seems likely, so far as present experience shows, to prove a guiding star in their difficulties.

Some fifteen months later, during the summer, namely, of 1909, Dr. Victor S. Clark again visited Canada, and made a supplementary investigation of the operations of the act. His report is again published, in Bulletin No. 86, of the Department of Commerce and Labor, and, as voicing the view of an unprejudiced and careful observer, it is of special interest to note his conclusions after this second investigation. These conclusions are summed up in the following sentences:

The act seems to be gaining support with longer experience, and has very few opponents outside of labor ranks. The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied the law with impunity. Most of the amendments proposed look toward perfecting details rather than toward revising the structure of the law. There is no likelihood that the act will be repealed, or that it will be extended to other industries or toward compulsory arbitration. The most serious danger it faces is the non-enforcement of the strike and lockout penalties in cases where the law is violated.

Under the conditions for which it was devised, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention.

It may be added that during the recent session of the Massachusetts legislature an act embodying the principles of the Canadian measure and modeled closely on its lines was before it for consideration and an active discussion on its merits took place in the American press; the measure was eventually deferred until the following session for final action, and its promoters are hopeful that it will then become law.

In the State of California also the principle of the Canadian

act has been endorsed in an elaborate report presented to the governor of that state by Mr. Harris Weinstock, a special labor commissioner, who was commissioned to investigate the labor laws and labor conditions of foreign countries generally in relation to strikes and lockouts. Mr. Weinstock's report, which is an able document of over one hundred and fifty printed pages, setting forth concisely the laws on this subject in all civilized communities, strongly recommends legislation on the lines followed by Canada, and contains the draft of a measure closely approximating the Canadian act. It is a curious fact that Mr. Weinstock had been, by independent observation and inquiry, led, as his report states, to the conclusion that the principles forming the basis of the Canadian act, of which he had at the time never heard, offered the most hopeful and practicable method for dealing with industrial disputes. The closing sentences of Mr. Weinstock's report, as bearing on this point, are specially worthy of note:

> It is generally conceded that public opinion is a most important factor in the settlement of labor disputes, more especially when they are of a character likely to affect public convenience or comfort or profit. It is rarely if ever that a strike or lockout can succeed that has public sentiment against it. The problem, however, has ever been how properly to enlighten public opinion and how to place before it the actual facts involved in a labor dispute as found by a disinterested inquirer in whom the public would have confidence.
>
> With these thoughts in mind it seemed to me that an important stride would be made in the direction of industrial peace, if legislation was created calling for a public inquiry in labor disputes before they had reached the serious stage of strike or lockout.
>
> I realized, however, that any legislation along such lines, in a country such as ours, must at best be experimental. While in that stage I feel that the proposed legislation should be confined to disputes likely to arise in the conduct of public utilities, since it is strikes and lockouts in these activities that, as a rule, more seriously affect the public welfare. Should the proposed legislation after a fair trial prove a success it would then be in the interest of all concerned to broaden it so that all industries might be brought under its influence.
>
> This conclusion having finally been reached on my part, I forwarded it on paper while in Brussels, Belgium, in the nature of a rough draft of a proposed law.
>
> On arriving in Paris a few days later I found awaiting me there a packet of printed matter sent me by the Canadian Labour Department through the courtesy of Mr. Dougherty, of the Canadian Department of Agriculture, whom some months before I had met while in Rome.

Looking over this printed matter I was surprised to find that my idea had been anticipated by the Deputy Minister of Labour of Canada, Mackenzie King, who had recently formulated and had succeeded in getting the Canadian Parliament to pass a public inquiry act. My satisfaction can be understood when I found among other documents in his collection the first annual report just issued by the Canadian Labour Department of the operation of the act which showed that ninety-seven per cent of the labor disputes submitted to a public inquiry had been amicably adjusted, and that in only three per cent of cases inquired into had there been strikes after an award was made.

Here we have a most striking illustration of the difference in effectiveness between voluntary arbitration and public inquiry. Under voluntary arbitration, having behind it all the machinery and influence of the state, there are strikes and lockouts in about ninety-seven per cent of cases, and peaceful settlement without cessation of work in about three per cent of cases. Under public inquiry we find the very first year of its trial in Canada, when at best the system could not yet have been perfected, ninety-seven per cent of peaceful settlements without cessation of work and but three per cent of strikes. Whatever doubts or misgivings I may have had as to the desirability or the practicability of the proposed public inquiry law were removed by the showing made by Canada as the result of an actual application of the principle. Surely, if in California we can, through the medium of public inquiry, adjust peacefully ninety-seven per cent of labor disputes, we shall have accomplished a most important work and shall have come as near establishing industrial peace as under our system of government is possible.

Sailing from Egypt to India, it was my good fortune to meet Mr. Mackenzie King, the framer of the Canadian public inquiry act, to whom I am indebted for valuable hints and suggestions embodied in the following recommendations, which I have the honor to submit herewith to Your Excellency.

It is understood that the Californian measure was held in abeyance for some time on account of the alleged unconstitutionality of certain of its provisions. This point has, however, been subsequently waived and the measure will now shortly be dealt with in the legislature.

An act similar in character has been introduced into the Wisconsin legislature, again after consultation with the Department of Labour of Canada, and in this case also has been held pending the consideration of the question of constitutionality. The decision in California will no doubt affect the situation regarding the act in Wisconsin, and the action of the legislature of Massachusetts will probably also have its due effect in both cases. The State of Ohio has been in active communication with the department, various

officials and public men having indicated a desire to see whether similar legislation might not be made effective in that state.

In the case of Illinois it is not understood that any definite action has been taken in the direction of legislating along the precise lines of the Industrial Disputes Investigation Act, but at a convention of officers of conciliation boards and boards of arbitration in Washington in January last, the special representative of the Governor of Illinois, in the course of a paper on Compulsory Arbitration contributed by him to the proceedings of the conference, spoke in the most cordial terms of the principle on which the Canadian act is based and strongly commended its general features.

Turning to the other side of the world, South Africa, again we find the influence of the Industrial Disputes Investigation Act in a marked degree. The legislative authorities of the Transvaal had been in close touch with the Department of Labour for a year or two regarding labour legislation generally, and in September last the Minister of Labour received the following letter from the Honorable Jacob de Villiers, Minister of Mines of the Transvaal, saying that a measure had been enacted in that country modeled closely on the lines of the Canadian act:

> I have to thank you for your letter of the 24th July last, and also for the very interesting documents which have been forwarded by Mr. Acland, the Deputy Minister of Labour.
>
> I enclose a copy of the Industrial Disputes Act, as passed in the Transvaal Parliament at its last session. I regret that I am unable to forward you the official reports of the debate, as they are not at present available, but will do so later.
>
> The bill, as you will see, is modeled on practically identical lines with the Canadian act, changes being made merely to suit differences in local conditions. The bill received the support of all sections of Parliament, the principle of conciliation and investigation being accepted in preference to that of compulsory arbitration.
>
> In preparing and introducing the bill I was much assisted by the valuable reports published by your department.
>
> I wish to tender you the thanks of my government for your kind offer of co-operation and assistance, which I greatly value and reciprocate.

It has already been indicated that in a few cases, six out of eighty-two, where, after disputes had been referred under the act the threatened lockout or strike has not been averted, the disputes in question related to union recognition. There is probably no

other question in which the parties concerned are so little susceptible to the process of conciliation or where investigation can hope to accomplish so little as in disputes of this nature. A complete surrender by one side or the other of ideas wholly divergent would appear to be the only means of settlement, and the main achievement of an inquiry under such circumstances is likely as a rule to be that of placing before the public a plain and impartial statement of the case, with findings accordingly. In the event then of lockout or strike the public is in a position to determine as to the degree of responsibility attaching to either party. Experience of the workings of the act has shown so far that the disposition of the public is to uphold the findings of a board, and that a lockout or strike declared in face of such findings fails of public support and is foredoomed as a rule to failure as a consequence. It is possible that continued experience of the present act will demonstrate to the parties to a dispute the futility of opposing the carefully considered judgment of a board of conciliation and investigation. In each case where, since the inception of the act, a strike has been declared in face of the findings of a board the strike has ended disastrously and the employees have in the end adopted substantially the recommendations made at the outset by the board which conducted the inquiry.

A word may be said, in conclusion, as to the question of penalties. As above indicated, no action has been taken by the Department of Labour or by any other department of the Dominion Government in the case of any alleged infringement of the act, either against employers or employees. There have been several convictions under the act where information has been laid by one party or other concerned in a dispute, but it will, however, be obvious from a study of the act as outlined in the preceding pages, that its success must ultimately depend less upon the question of the enforcement of penal clauses than upon the acceptance of the principle that the concentration of public opinion on an industrial dispute by means of an official inquiry is calculated to prevent either party from taking a position of manifest unfairness; while on the other hand the general good of a community, aside from the particular welfare of those concerned in a dispute, is a matter of such paramount importance as to justify the outlawing of strikes or lockouts until the dispute to which they relate has been made the subject of investigation.

SETTLEMENT AND PREVENTION OF INDUSTRIAL DISPUTES IN NEW ZEALAND

By Paul Kennaday,
New York.

New Zealand came upon the scene when railways were soon to to be a necessity, when home industries were being displaced by factories and when labor legislation in England was already giving expression to the new theory of the state's right and duty to protect the workers against the grosser forms of industrial barbarity. The stubborn fighting of the native Maoris helped to knit together all the more strongly the isolated church colonists of 1840 and their early followers, and the government then established and so secured, rich in land but with a treasury depleted by the wars, freely sold of its many acres to its people eager to secure homes upon the land and the best of grazing pastures for their sheep.

As the colonists grew in number, later comers discovering that the richest and most accessible lands had been taken up by those first in the field, turned to the state for help, and land reform came to be a burning issue between those already on the land and those who demanded advances to settlers, low rentals, freeholds upon easy terms and the "bursting up" of large estates.

When private capital was lacking for the building of railways it needed no campaign of education, no butting against interests already vested, to induce the new settlers again to turn to their state for the opening up of lands required for settlement and for the further development of existing holdings. When shops and factories began to assume some importance in the new country and strikes came to be matters of not unusual occurrence and gross sweating in certain trades was disclosed, once again state aid was called for and this time with insistence by an urban working class steadily gaining in numbers upon the older middle class of pastoralists and employers. By 1890 the Progressive Party was brought into power for the first time through the votes of a united working class indignant over their complete defeat in the Maritime Strike, and by those who demanded land settlement laws much more liberal

in character that the large sheep-run holding and moneyed conservative class were prepared to countenance.

At the outset of the new régime under the remarkable and all-powerful Richard Seddon, one of his most able lieutenants, Mr. William Pember Reeves, Minister for Labour, laid before Parliament a well-considered plan for the compulsory arbitration of labor disputes. For three years even New Zealand law makers, busy with more urgent land reforms, viewed askance this novel scheme. But by dint of much persistence upon the part of its author the bill was enacted by a narrow margin in 1894, and thereafter has continued with many and frequent amendments to the present time. Of these amendments the most numerous and far-reaching were those of the session of 1908, when Parliament was compelled to recast the old act, now become thoroughly unsatisfactory to employers much perturbed by a half dozen small strikes in which the workers had successfully defied the law of the land and had withstood the judgments of the Court of Industrial Arbitration.

The present act, The Industrial Conciliation and Arbitration Act, 1908, and the seventy-four sections in amendment, of the same year, is a careful attempt to avoid the failures and causes for friction of the antecedent acts. Again conciliation becomes the foundation and the trade union remains the keystone to the arch bridging over the opposing interests and misunderstandings separating capital and labor. The worker may avail himself of the privileges of the act, only as he is a member of a registered union keeping regular books, having a common seal, with capacity to sue and be sued, whose property may be attached and whose members may be disciplined. Conciliation is first attempted between the union and the individual or associated employer; after that is exhausted, recourse is had to arbitration.

For the administration of the act the country is divided into industrial districts in each of which a Commissioner of Conciliation, holding a salaried three-years' appointment from the governor, is ready, upon application to him made by employer or employee, to set up a Council of Conciliation for the hearing of any case involving differences not adjustable by the parties themselves. Each side may nominate one, two, or three representatives, who, if accepted by the commissioner, then as a Council of Conciliation under the chairmanship of the commissioner, proceed to hold public hearings

of the matters in dispute. The council has the usual powers to summon witnesses, to administer oaths, to examine books and papers, and has a wide latitude in the matter of procedure and the character of the evidence it will admit. The hearings, marked by informality and freedom from legal technicalities, become, in fact, amicable conferences of men mutually desirous of settling their differences upon the best terms possible. The council members being men trained in the trade under review, handle with a dispatch surprising to the layman the intricate and lengthy trade logs before them and adjust to a penny, indeed to a half penny, day-work and piecework rates. Whether it be wages, hours, the open or closed shop, or any other of the causes of friction between employer and employed, if an agreement is reached by this council of representatives, an award is drawn up and filed with the registrar appointed to administer the act and the parties are forthwith bound for any period agreed upon of not more than three years.

In case no settlement of the dispute is possible, the council is authorized to "make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the council thinks fit and may state in the recommendation whether, in the opinion of the council, the failure of the parties to arrive at a settlement was due to unreasonableness or unfairness of any of the parties to the dispute." This provision, taken from the Canadian Industrial Disputes Act, is an attempt to put the responsibility for failure to agree where it belongs and to inform the public of the true nature of the dispute. It is, however, a counsel of perfection not likely to have much bearing on actual disputes as the assessors, representatives of opposing sides, must be unanimously agreed before the recommendation may be made.

But whether such opinion is delivered or not, all cases before councils in which settlements are not "sooner arrived at by the parties and embodied in an industrial agreement duly executed" must be referred to the Court of Arbitration not earlier than one month or later than two months after the date fixed by statute for the original hearing of the dispute before a council. The court of arbitration thus becomes a court of appeals, divested now of all its former original jurisdiction, and so, as an important consequence, no longer weighted down with a calendar of cases so long that its decisions cannot be rendered without a delay causing loud complaint

from parties demanding some immediate and definite basis for their daily relations.

Again the litigants appear before referees of their own selection, predisposed, it may be assumed, one part to one view and the other to the opposing view of the controversy. If one judge of supreme court qualifications, holding office for life on appointment from the governor and two "nominated members", appointed for three years upon recommendation respectively of employers and workers, may not seem as unprejudiced and impartial a tribunal as might be desirable to mete out exact justice, the practical-minded New Zealander would admit the compromise and point out that the complexities of the situation had driven him to it. As a matter of fact, the two nominated members of the court would fill no very useful function if a competent judge were found willing to retain his office for more than a few years. But the position is an arduous one, open to almost constant and often bitter criticism, and the presiding judge, before he has long been upon this novel bench, is anxious to return to the more peaceful channels of law gliding along through well-marked precedents. And so the court representatives of employers and employed, though they may usually be depended upon to take opposite views on general principles, render a distinct service in bringing to bear upon technical trade questions a more exact information than would usually be possessed by the usual judge learned only in the law.

The proceedings before the court, though somewhat more formal in character than those before the councils, yet have little of the delays and circumlocutions and technicalities of the common law court, an end in numerous ways sought to be obtained by the statute makers, and by none with more general approval than by the prohibition of the representation of parties through lawyers. In addition to the more speedy trials thus assured and the relief to the court from the burden of original jurisdiction formerly held by it, the enforcement of judgments and the collection of fines and penalties is now left largely with the magistrates' courts. As a result the court may now attend to the business brought before it with the despatch which the peculiar and pressing nature of that business manifestly requires.

In its judgments the court may impose preference in employment to unionists, if competent unionists offer from unions open

upon small stated initiation fees and dues to all of sufficient trade skill who apply; it may fix a minimum wage, making lower allowances for "under-rate," incompetent labor; it may determine hours of employment and the amount of compensation for overtime work; it may bring in employers and unions of workers not parties to the original proceedings, and it may make its decisions a common rule for one or more industrial districts.

By so providing for the immediate calling together of representative expert conciliators and by setting up a permanent ready appeal court with peculiar knowledge of industrial matters, coupled with large powers in their regulation, a most effective method seems to have been adopted for the prevention of strikes and lockouts. Express penalties, such as the suspension of union registration and fines ranging from $50 to $2,500, may be imposed in case of strikes or lockouts by parties bound by an award, or who are before council or court for a determination of their claims, and no part of the act came in for more heated discussion at the time of the latest amendments than these strike-prevention clauses. Employers, smarting under the well-founded conviction that the old act held them willy-nilly, while the workers were free to obey or to disregard judgments rendered against them, went so far as to demand imprisonment as a penalty for striking. The minister for labor actually brought in a bill so to promote conciliation and industrial peace. But it is not through the fear of fine, and certainly not through the martyrdom of imprisonment, that men and women are to be lead to agree with their masters. The new act will continue to succeed as a preventive of strikes in spite of its strike-prevention clauses, rather than because of them.

But whatever may be the measure of success of this new arbitration and conciliation act, and however much the old act may have helped to prevent strikes in New Zealand, before it is concluded that industrial legislation of this character would be practicable in larger and more complex industrial communities, it is necessary to consider certain conditions unique to New Zealand which have had a far-reaching effect upon the operation of all her labor legislation. Consideration must be given to the manner in which the country came to adopt the principle of state intervention in labor disputes along with other measures of a state socialistic character. Even when compulsory arbitration was in its first early experimental days

the people of New Zealand had become accustomed to a wide application of the principle of state aid and intervention. These settlers in this far-off country were a homogeneous people, British born or British descended almost to a man, driven to their fertile island home by a common impulse to make a better and an easier living than was possible for them in the old, crowded, slow-changing England, full of hope, with a large measure of determination to build better than their fathers, and possessed of their father's respect for law as law. The labor leader's shocked reply to the natural American suggestion that his union should strike to remedy an intolerable situation, "Why, it's against the law, Sir!" was an illustration of an un-American attitude of mind that in itself has made compulsory arbitration in New Zealand possible. Coupled with this is a respect for the judiciary and a respectable judiciary not yet attainable in a land where it is common report that more than one judge has been placed upon the bench by this or that corporate interest, while others have paid to their political masters from ten thousand dollars to one hundred thousand dollars for nominations. With an inevitable class consciousness in presiding judges of the New Zealand Arbitration Court, labor takes for granted and even objects, and at times, strongly, that it cannot appear before a judge uninfluenced by a certain prejudice, unconscious but none the less actual, in favor of the employing class in which the judges have been born and reared, where their friends and former clients are. But of their venality, of deliberate unfairness, of intended partiality, of dishonesty and corruption in securing office, not a suggestion is ever made and no suspicion seems ever to be entertained.

As compared with countries where a constant and large fringe of unemployed are ever driven by want to depress the wages of the employed, New Zealand labor is peculiarly fortunate and intends by all restrictive immigration laws in its power to continue so to remain. There is a relative scarcity of labor in New Zealand, especially of skilled factory labor, that of itself maintains wages and makes demands for their increase or for the reduction of hours difficult to withstand. Coupled with this has taken place a large increase in the spending power of a community of less than a million souls whose exports have increased from $41,000,000 to nearly $100,000,000 in the fifteen years since the arbitration act has been in force, and whose government has borrowed abroad, and spent

largely at home, moneys now totaling $332,000,000 as against $200,000,000 of national debts in 1895. It has been easy enough to pay the piper while the dance was on and all had money in their pockets. But when retrenchment in borrowing shall become necessary and when it becomes manifest at last to the most unblushing of protectionists that tariff walls cannot be raised any higher about the fields and flocks of New Zealand, it will be no longer the facile and acceptable device it is now to shift on to the consumer the cost of court-increased wages. Even the steady, compromising English descended New Zealand workman, with all his inherited respect for law in general, with his acquired dependence upon the arbitration act in particular has manifested upon several occasions a surprising inclination toward forcible objections when demanded improvement in wages and hours have been withheld. It is by no means certain that when the arbitration court refuses to place further burdens upon industry face to face with a falling market, that then New Zealand will be free of strikes. But it will be freer than if without its conciliation and arbitration act, and until then, and in part because of the act, New Zealand, no doubt will continue to enjoy the blessings of industrial peace.

That the compulsory and court features of the New Zealand act could not be applied in America or in any other large country of great and varied industrial interests seems almost as patent as that conciliation upon the New Zealand model would be not only desirable but altogether possible of accomplishment. The mere machinery in readiness to move disputing parties to a reasonable and quiet consideration of each other's side would prevent not a few open ruptures, while hearings held and cases discussed could hardly fail often to end in satisfactory settlements.

But the experience of New Zealand points to the conclusion that in proceedings of this nature the state and its tribunals must deal with the union of the workers; cannot, indeed, but refuse to grant to the ununionized, irresponsible individual workers his day in this particular sort of a court. So long as American employers continue to fight unionism as unionism, to insist upon the shop closed to unionists, to blacklist strikers, and to refuse to recognize that steam and electricity have altered the status of the industrial worker even as they have revolutionized industry, an American act for the conciliation of labor disputes, would be but one more added to our long list of moral aspirations enshrined in statutes.

THE GERMAN COURTS FOR THE ARBITRATION OF INDUSTRIAL DISPUTES

By Harris Weinstock,
Special Labor Commissioner for California.

During the summer of 1908 I was making investigations in Berlin on German labor laws and labor conditions as Special Labor Commissioner for California. In the course of an interview with His Excellency Herr Delbruck, German Minister of Commerce, I invited his opinion on compulsory arbitration. His reply was to the effect that the German government does not favor compulsory arbitration for fear that it might find itself unable to enforce the decisions of its industrial courts and that a failure to do so would bring the administration into contempt.

The German authorities are exceedingly slow about exercising any compulsion in the settlement of labor disputes. The relations between organized labor and the German federal administration at best are strained and more or less unfriendly. This is largely due to the fact that the trade unions and the social democratic party in Germany consist practically of the same membership.

Politically the government and the social democratic party have little in common and, as a rule, are found in the attitude of bitter political opponents. The frequent instances of political warfare between them have led to strained relations and to each regarding the other with suspicion and with more or less hostility. Organized labor in Germany now embraces a membership of about two millions and is steadily growing. In 1907 the Social Democrats cast 3,259,000 votes, elected to the Lower House 43 out of 397 members, had 2,000 mayors and other executive or administrative officials in the Empire, and published 158 journals and periodicals.

His growing strength has won for the German wage earner, his trade union and his political party, the wholesome respect, if not the fear, of those in power. The German government, therefore, is very loth to attempt to pass legislation along the lines of compulsory settlement of labor disputes, which in all likelihood would

be regarded as a governmental effort to curb the liberties and the freedom of action of the worker. The government, however, has taken progressive measures along the lines of encouraging conciliation and voluntary arbitration. The first attempts in this direction were made in 1890 when legislation was passed regulating the industrial courts. There had existed in various parts of Germany, for nearly seventy years, various courts dealing with arbitration or concilation for collective disputes. This, however, resulted in great diversity of form and procedure in the courts, causing considerable dissatisfaction, and finally led to the adoption of the law of 1890 which provided for a uniform regulation.

The tribunals as since constituted are composed of an equal number of workers and employers. The local authorities appoint in addition a president and a deputy. The chief function of these tribunals is, upon complaint of either party, to adjust individual disputes. Their jurisdiction extends only to those employed in factories. A further provision of the law of 1890 specifies that[1]

> Courts may act as conciliation bureaus in case of disputes concerning the terms of continuation or renewal of the labor contracts (Art. 61), but only on condition that both parties request such action and, where they number more than three, and appoint delegates to the hearing. Such delegates must be twenty-five years of age and in the enjoyment of full legal rights. The Conciliation Bureau consists of the president of the court and at least four members, two employers and two workingmen, but there may be added, and must be when the delegates of the two parties so request, representatives in equal numbers named by the employers and employees. Both these representatives and the members of the bureau must not be concerned in the dispute in question.
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> The first step in the procedure is a determination of the facts by hearing the delegates from each side and the examination of witnesses, the bureau having power to summon and examine witnesses, though no penalty is provided to compel their presence. Following this each side must formulate in conference its opinion upon the allegations made by the other party and the witnesses, and then an effort at conciliation is to be made. If this succeeds, the agreement signed by the bureau and the delegates is to be published. If not, the court is to render a decision by a majority vote, though in the case of a tie the president may decline to vote and declare that no decision could be rendered. When a decision has been given, the delegates must declare within a specified time either acceptance or rejection thereof;

[1] "Report of French Bureau of Labor." De la Conciliation et de l'Arbitrage dans les Conflicts Collective entre Patrons et Ouvriers en France et à l'Etranger, 1893, p. 476. See Bulletin No. 60, Sept., 1905, Department of Commerce and Labor, Washington, D. C.

failure to make declaration to be taken as refusal. At the end of the time allowed the bureau is to publish the decision. It will be seen that everything in the proceeding is absolutely voluntary for the parties in dispute.

Organized labor in Germany has for years been battling for recognition at the hands of the employer. Thus far, as pointed out in my report to Governor Gillett on strikes and lockouts in foreign countries, January, 1910, aside from the printing, book binding and building trades, it has not been successful in obtaining the desired recognition excepting in the case of some of the smaller employers. The great German employers of labor, including the employers in the metal and the textile industries, have steadily and persistently refused to deal with or to recognize labor unions. Employers in these industries, with three million wage earners on their collective pay rolls, are strongly organized and in a most determined manner refuse to treat with or to acknowledge the existence of labor organizations or their representatives. The employers contend that union workers, as a rule, are also members of the social democratic party, which has persistently and needlessly antagonized capital and capitalists by violently denouncing both, and that so long as this policy on the part of organized labor maintains, employers will refuse to recognize trade unions.

Exceptional cases will be found where large employers will recognize unions composed, however, exclusively of their own workmen. For example, Messrs. D. Peters & Co., of Elberfeld, manufacturers of woolen and cotton stuffs, have a council composed of nine employees, four of whom are nominated by the employers and five are elected by the workmen, with a member of the firm as president, who, however, has no vote. All differences arising in relation to hours of labor, or wages, are referred to this council, whose decisions have ever been accepted by both parties. This plan seems to have worked to the satisfaction of all concerned.

The state has thus far refrained from even attempting to exercise any coercion in forcing settlements in labor disputes. It is a strong believer, however, in the exercise of conciliatory measures. With this end in view a law was enacted creating what has since become known as the arbitration courts for trade disputes. There are between four hundred and four hundred and fifty such courts in Germany. The court in Berlin, for example, has eight depart-

ments, with a judge for each department. These courts have three separate and distinct functions:

(*a*) To decide disputes between individual workmen and their employers.

(*b*) To conciliate in disputes between bodies of workers and their employers.

(*c*) To give expert information and opinions in reference to trade questions to legislators and to state executives.

Under the law the court awaits the registering of a complaint by either party. It also has the power, however, to take the initiative and to summon both parties to a hearing, subject to a fine of twenty-five dollars for failure to respond to such summons. There is no penalty for either side refusing to answer questions put by the court or for refusing to enter into negotiations with the other party, even at the instance of the court.

The theory of the German law is that one-half the battle in a labor dispute is won in the direction of peace if both parties can be brought together by a third party, who in this instance is the court, which is disinterested and in whom both sides can place confidence. I was informed by Herr Gustav Melisch, Chief Secretary of the Industrial Court of Berlin, that seventy per cent of the disputes are submitted to this court, and that as a rule the decisions rendered are accepted, although under the law there is no obligation to do so; most cases are settled by compromises effected between the parties in dispute, while the case is in course of investigation and prior to the court decision.

It is well to bear in mind, however, that, as a rule, the cases dealt with by the industrial courts are confined to those arising between the smaller employers and their workers. As previously explained, the large employers will in no wise recognize unionized labor, or the industrial courts, except to respond to the legal summons and then to decline answering questions which under the law they may legally do, and the power of the court is at an end. An exceptional case occurred in the summer of 1908. A national strike in the building trades was threatened throughout the Empire. Through the efforts of the industrial court a hearing was held at which representative building contractors and wage earners from various parts of Germany were present. The conference continued for many days, and finally, through the good offices of the court,

mutual concessions were made and an agreement for an extended period was entered into which insured industrial peace in the building trades until this present season. Seemingly, it has been impossible for the industrial court to repeat its successful effort, as the press has been publishing recent accounts of the general building strike now on throughout Germany.

When I was last in Germany, His Excellency Herr Delbruck, the Minister of Commerce, stated that the draft of a law was then under consideration regarding so-called "Chambers of Labor." These chambers of labor are to serve as courts of arbitration wherever special arbitration courts for trade disputes do not exist, or if the employer and employees are engaged in the districts of several existing arbitration courts, or if no agreement can be reached concerning a dispute in the ordinary court for trade disputes. The composition of the proposed labor councils, their functions and powers, had at that time not yet been fully determined upon, beyond the general idea that they are to be composed partly of employers and partly of employees. At this writing I am unable to learn whether this proposed measure has been enacted.

The wonder is not that so little has been achieved by the German industrial courts, but that in view of the very limited powers granted these tribunals, that so much has been accomplished. It can easily be understood that a fine of $25.00 for failure to respond to a court summons can have very little terror for a great corporation about to lock out its men, nor is this trifling amount likely to have a deterrent effect on a powerful labor union that has voted to go on strike, and that believes it can get better results from a strike than through conciliation.

The industrial court serves very useful purposes where both parties to a labor dispute are ripe for a conference, but hesitate to take the initiative for fear of its being mistaken by the other side as a sign of weakness. The intervention of the court releases both sides of this responsibility, and paves the way without prejudice for a "get together" conference. Yet another helpful feature in the German industrial court system is the practice often followed during the course of public negotiations, by the assistant judges, of discussing the points at issue separately and privately with the parties to the dispute, frequently bringing about in this manner compromises and agreements.

In the matter of dealing with labor disputes Germany seems to be to-day where England was several decades ago. The attitude toward organized labor on the part of English employers, as a rule, is in marked contrast to that of the German employer. The English employer has long since discovered the wisdom and expediency of recognizing and dealing with organized labor, and his policy has made for a much higher degree of industrial peace. This fact is emphasized by comparing England's record of strikes in recent years with that of Germany. Owing to the difference in method followed by these two countries in keeping their strike records, an exact comparison is not possible, but the following figures are sufficient to indicate that the policy pursued by English employers is making for industrial peace, whilst that followed by German employers in refusing to recognize or to deal with organized labor is making for increasing industrial war.

The following figures are taken from the English government report of 1907 on strikes and lockouts:

Year.	No. of disputes.	Work people involved.	Duration of working days lost.
1897	864	230,267	10,345,523
1907	601	147,498	2,162,151

It will be noted that during the intervening ten years for which the figures are given, the number of disputes has diminished by 34.40 per cent, the number of workmen involved has been decreased by 36.03 per cent, and the number of working days lost, which after all is the correct unit to be considered, has been reduced by 79.10 per cent. To the best of my knowledge this is the most remarkable showing of any industrial country in Europe.

Compare the foregoing record of England with the following figures taken from Bulletin 86, page 243, January, 1910, issued by the Department of Commerce and Labor at Washington, D. C., and it will be seen that German employers have paid a heavy cost for their unwillingness to recognize or to deal with organized labor:

Strikes in Germany

Year.	Strikes.	Establishments affected.	Strikers.
1899	1,288	7,121	99,338
1907	2,266	13,092	192,430

In the nine years for which comparative figures are here given, the number of strikes in Germany has increased over 75 per cent, the number of establishments affected has increased over 83 per cent, and the number of strikers has increased over 93 per cent —a sad commentary upon the policy pursued by the German employer. Nor is the end yet in sight. Despite the attitude of German employers, organized labor in Germany has gone forward in recent years with rapid strides and is destined to a continued growth. The persistent and steady refusal on the part of German employers to deal with labor unions inevitably must still further widen the gap and increase the existing bitterness between wage payers and wage getters, with heavily added cost, if not with ultimate disaster to both.

It might be assumed from the foregoing statement that I was either a trade unionist or that I held a brief for organized labor. It happens that neither is the case. I am and have been for over thirty years a large employer of labor. I am not writing this, however, as an employer, nor from the employer's standpoint. I am writing purely as an investigator and as a chronicler of authenticated facts. As one who has had the rare opportunity of officially investigating the labor laws and labor conditions not only of Germany but also of the leading industrial countries of the world, I would be blind indeed or stupidly prejudiced against trades unions did I not see with perfect clearness that organized labor has come to stay, and that so long as the wage system prevails unionism is destined to be a permanent and growing institution of modern industrialism. Moreover, no fair-minded investigator who has noted the work achieved by trade unionism in the interest of the wage earner and his dependents can help but feel that for trade unionism to fail, is to mean for the worker a backward step that in the end would force his return to the wretched condition of his forbears.

The only protection the worker can hope for in these days of gigantic industrial organization is that which comes to him from solidarity and collective bargaining. That industrial nation then, all other things being equal, is likely to enjoy the highest degree of industrial peace and to make the greatest industrial progress, whose employers, great and small, in common with the employers of England, are wise enough to take conditions, not as they would like

to have them, but as they are, and deal with these conditions accordingly.

The employers of Germany can no more hope to destroy trade unionism by refusing to recognize it, than can the ostrich get rid of his pursuer by hiding his head in the sand. Sooner or later German employers, in common with employers in most other growing industrial countries, will see the wisdom of recognizing organized labor. They will see the wisdom of inviting the State to intervene in disputes that cannot in any other way be settled. They will see the wisdom of having the State assume the part of public inquirer, investigator and conciliator, not, as now in Germany, with little or no power at its command, but with the fullest right to summon witnesses, place them under oath, examine books and documents, and do all other things that may enable it to reach the facts involved in the industrial controversy, so that through published statements issued as the result of such public inquiry, public opinion may be enlisted to cast its weight and its influence against the side in an industrial dispute which may assume an unfair or an unreasonable attitude.

BOOK DEPARTMENT

NOTES.

Adams, E. D. *British Interests and Activities in Texas, 1838-1846.* Pp. viii, 267. Price, $1.50. Baltimore: Johns Hopkins Press, 1910.

Professor Reeves' study of American Diplomacy under Tyler and Polk is now followed by a study of British Diplomacy in the same field covered by the earlier work. The material is drawn almost exclusively from the Public Record Office in London. Many new sidelights are thrown on controverted points. It is shown that England at first was indifferent to Texas. Only toward the close of his ministry did Palmerston realize how important to England as a check upon the United States an independent Texas might become. When Aberdeen succeeded to the ministry, the friendship of the United States was desired by England. Aberdeen was disposed to disregard Texas and go back to the traditional policy of friendship to Mexico. Under the influence of the abolitionists, however, he was led to favor abolition in Texas and to counsel Mexico to ask it as one of the conditions of peace. This it was which enabled Calhoun to charge him with attacking an American domestic institution. Humanitarian interest was interpreted as political intrigue. Thus the man who wished to conserve American friendship was put in the position of one making a covert attack.

American Sociological Society, Publications of the. Volume IV. Pp. 217. Price, $1.60. Chicago: University of Chicago Press, 1910.

Batten, S. Z. *The Christian State.* Pp. xv, 458. Price, $1.50. Philadelphia: The Griffith & Rowland Press, 1909.

The author attempts in this volume to interpret the state, to show the relation of democracy to human progress, and to indicate the real relation of the state to the kingdom of God, as well as "the lines of effort for the divine potencies of the gospel." The nature, origin, functions and forms of the state are discussed in the first part of the work; the beginnings, advantages, perils and tasks of democracy comprise the second; and the relation of Christianity to these institutions, with a final chapter on The Realization of the Christian State, comprise the third and final part. This work aims to arouse Christian men to make the coming age Christian in spirit and method. The trend of the present is in this direction, as the nature of these institutions indicates. The author is to be commended for the scientific manner in which he has combined the conclusions of political science with the ideals of Christianity.

Beard, C. A. *American Government and Politics.* Pp. viii, 772. Price, $2.10. New York: Macmillan Company, 1910.

This text is interestingly and carefully written and is of usable size. The proportions are good. Of the 750 pages, one-fifth treats of the historical

basis of the government and the rest of the book is about evenly divided between the federal and the state and local governments. The references, which are given at the foot of the pages, are to authorities usually available, even in the libraries of the average college. Good use is made also of the collections of "Readings" recently published by Ames, Reinsch and the author. Rather more attention than in other texts is given to the increasingly important administrative services of the government. Municipal government—the branch which affects the individual most nearly—is emphasized. The discussion of party activity, especially in the local units, is especially to be commended. Specific legislative problems such as corporation control, railway taxation, child labor and the like are given a brief but clear review. The author is much to be complimented on his successful attempt to make government appear as the "going thing" which it is.

Bruce, H. Addington. *Daniel Boone and the Wilderness Road.* Pp. xiii, 349. Price, $1.50. New York: Macmillan Company, 1910.

Those who have read Mr. Bruce's Romance of American Expansion will expect here as they found there a vivid account of developments not quite ranking as a history but as much more than a story. Mr. Bruce writes well. The book, though it at times wanders far from Boone and the Wilderness Road, has unity. It is a picture of the pioneer's *drang nach westen*. Boone, Sevier, Robertson, the Girtys, Braddock, Clark and lesser heroes and ruffians of the border all play their parts. The trails of the pioneer, the buffalo hunt, the salt making, fur trade, Indian raids, early constitutions, the Revolution in the West and the host of other elements that made Western life unique are brought within close range. Not the least interesting chapters—in fact the chapters which make the book valuable are those which treat of Boone's later life, when he moved on to Missouri and took Spanish citizenship, only to find himself once more an American, thanks to the whim of Napoleon. A good picture, too, is given of the old man pressed by civilization, and even in his last years' longing for the yet farther West where he might again shoot the buffalo from his doorstep.

Carré, H. *Histoire de France.* Vol. VIII. Le Régne de Louis XV. (1715-1774). Pp. 428. Paris: Hachette & Co., 1909.

This last contribution to the great work on French history begun by M. Lavisse is in every way worthy of its predecessors. M. Carré is Professor of History at the University of Poitiers and a specialist in French history of the eighteenth century. The first five chapters are devoted to the Regency of the Duke of Orleans, whose versatility, training, etc., are placed in strong contrast to his utter indifference, incapacity and debauchery; the second book deals with the years of Fleury's ascendency and the wars following the accession of Maria Theresa in Austria; the third with that of Madame Pompadour and Choiseul, and the fourth with the last years of the reign. There are interspersed several exceptionally good chapters on the civilization of the period, as for example *"La Cour, les moeurs, l'art et la mode pendant la Régence"* (Bk. I, Ch. IV); *"La Vie intellectuelle, depuis la Régence jusqu' au millieu du Siècle"* (Bk. II, Ch. IV); *"La propagande philosophique"* (Bk.

III, Ch. III), and "*Le mouvement économique et les finance, etc.*" (Bk. III, Ch. V).

At the beginning of each of the broad divisions of the subject is found the critical and well selected list of authorities usual in this work.

Draper, A. S. *The Rescue of Cuba.* Pp. 235. Price, $1.00. New York: Silver, Burdett & Co., 1910.

Immediately after the Spanish-American War the first edition of this book was written. It bears the marks of the chauvinism that characterized public opinion at the time. There is little that can be said in favor of the Spanish government or the Spaniards except when the American victories are discussed. Then the enemy are valorous foes vanquished by the "indomitable courage" of the Americans. With the exception of this prejudice and high coloring due to hero worship the book is good. Misstatements of fact are few and the style of the narrative is such that many a schoolboy will be given a clear idea of the course of the war which but for such glowing descriptions would for him remain locked in formal histories.

Eastman, C. *Work Accidents and the Law.* Pp. xvi, 345. Price, $1.50. New York: Charities Publication Committee, 1910.

Farrington, F. E. *French Secondary Schools.* Pp. ix, 450. Price, $2.50. New York: Longmans, Green & Co., 1910.

The author begins with the revival of learning, deals at some length with the Renaissance period and devotes the major portion of the book to the organization of the program of the modern secondary school. Many of the chapters are extremely detailed, dealing with "modern languages," "history," "geography," "mathematics" and other specific subjects in the curriculum.

The organization of the French secondary school reflects strongly the central form of administration provided by Napoleon. The schools are directly under the minister of public instruction and fine arts and are subject to the decisions of certain academic councils through administrative boards. The French secondary school is peculiar in that it is not in reality a secondary school, but a complete school in itself, designed for the socially élite. While it is anti-democratic in the extreme, it is maintained through the influence of the professional and administrative classes.

The work is aptly done, the analyses are complete, but the material presented is so detailed as to be of little interest except to the student of technical educational problems.

Fuller, Thomas E. *The Right Honorable Cecil John Rhodes.* Pp. xii, 276. Price, $1.60. New York: Longmans, Green & Co., 1910.

Few men are as was Rhodes, both prophets and empire builders. How great a man in both ways was the "Emperor of South Africa" is the theme of Mr. Fuller's appreciation of one of the most spectacular of the figures of the later nineteenth century.

Only the portion of life during which Mr. Rhodes made the history of South Africa his own life history is described. Broad human interest, implicit trust in men of sound character, hatred of pettiness and a remarkable

ability to "mesmerise" those with whom he came in contact are portrayed as his dominant personal characteristics. As a statesman his life work was of course the expansion of English control northward to meet the sphere of influence extending south from Egypt, but this did not blind him to other issues. The confederation of South Africa, the obliteration of racial prejudice, efficient rule of Cape Colony, a scheme of higher education for South African youth and a multitude more claimed his attention.

Mr. Fuller is not unaware of his friend's faults. Rhodes was not always delicate as to means, and he never forgave the men who wished to keep him under a cloud after the Jameson raid, but he never lost his love of the empire and the colony he had made his home. His life was a constant labor for high ideals. At death he longed to be again in harness because there was "so little done; so much to do."

Godfrey, H. *The Health of the City.* Pp. xvi, 372. Price, $1.25. Boston: Houghton, Mifflin Company, 1910.

While not at all scientific, the present volume is one of the most acceptable of the numerous recent books upon the subject of health in cities. Air, milk supply, food, water, ice, sanitation, noise and housing, comprise the topics considered in the book. The style is interesting, but is lacking in statistical material.

Gompers, S. *Labor in Europe and America.* Pp. xi, 287. Price, $2.50. New York: Harper & Brothers, 1910.

Haney, Lewis H. *A Congressional History of Railways in the United States.* Vol. II. Pp. 335. Madison: Democrat Printing Company, 1910.

Hicks, R. D. *Stoic and Epicurean.* Pp. xix, 412. Price, $1.50. New York: Charles Scribner's Sons, 1910.

Holdrich, T. *The Gates of India.* Pp. xv, 525. Price, $3.25. New York: Macmillan Company, 1910.

Jameson, J. F. (Ed.). *Johnson's Wonder-Working Providence, 1628-1651.* Pp. viii, 284. Price, $3.00. New York: Charles Scribner's Sons, 1910.

This, the latest addition to the admirable series of "Original Narratives of Early American History," is a new edition of what the editor terms "the first published history of Massachusetts." In 1653 there was published in London a small octavo entitled "A History of New England, from the English Planting in the Yeere 1628 until the Yeere 1652." The name of the author did not appear, but the running caption of the volume was "The Wonder-working Providence of Sion's Saviour in New England," by which unique title the work ever since has been known. As the sale of the work was disappointing, the publisher five years later unscrupulously utilized the unsold sheets as Part III of Georges' "America Painted to the Life." This led to a public protest and repudiation by the younger Georges. It was reserved to the later New England historian, Thomas Prince, to disclose the true authorship of the book, attributing it to Captain Edward Johnson of Woburn. The present scholarly edition is provided with an introduction and with copious

and helpful notes by the editor, a descendant of Captain Johnson. The volume is especially valuable as "the honest attempt of a Puritan man of affairs to set forth to his fellow-Englishmen the first twenty-three years' history of the great Puritan colony."

Kautsky, Karl. *The Class Struggle.* Pp. 217. Chicago: Charles H. Kerr & Co., 1910.

Karl Kautsky is acknowledged to be one of the leading socialists of the nineteenth century. He comments upon the development of the proleteriat, the capitalist classes, the class struggle which has arisen out of this development, and the commonwealth of the future which must arise when the proletariat comes into its own.

Kelly, E. *Twentieth Century Socialism.* Pp. xix, 446. Price, $1.75. New York: Longmans, Green & Co., 1910.

Leland, A. *Playground Technique and Playcraft.* Pp. 284. Price, $2.50. Springfield, Mass.: F. A. Bassette Company, 1909.

Leupp, F. E. *The Indian and His Problem.* Pp. xiv, 369. Price, $2.00. New York: Charles Scribner's Sons, 1910.

Lock, R. H. *Recent Progress in the Study of Variation, Heredity and Evolution.* Pp. xiv, 334. Price, $1.50. New York: E. P. Dutton & Co., 1910.

In THE ANNALS for May, 1907, Vol. 29, there appeared a review of the first edition of this work. It is a pleasure to note that it has been so favorably received that a second is necessary. With the exception of Chapter X (Eugenics), which is practically new, there are few changes. This chapter on Eugenics is a synopsis of the work of Galton, Karl Pearson and the other Englishmen who have made the matter prominent in recent years. This volume is one of the best for any student who wishes to know the present views of scientists.

Marx, Karl. *The Poverty of Philosophy.* Pp. 227. Chicago: Charles H. Kerr & Co., 1910.

Mathews, S. *The Social Gospel.* Pp. xx, 168. Philadelphia: The Griffith & Rowland Press, 1910.

It is the purpose of this volume "to set forth the social teachings of Jesus and his apostles, as well as the social implications of the spiritual life;" not to give technical instruction on social questions, but to define and stimulate the Christian attitude toward such questions. For this reason the spiritual, rather than the economic, significance of Christianity is emphasized. The gospel is represented as an inspiring hope and promise for the future, rather than a new group of laws, the principles of which must be incorporated into our social life or become inoperative.

The chapters have been planned for class work in introducing young people to the study of social problems. Each chapter is concluded with a "Quiz" and "Questions for Further Study." The work is divided in five parts under the heads, General Principles, The Family, The State, Economic

Life and Social Regeneration. It is a valuable contribution to this phase of social science.

Mundy, F. W. (compiled by). *The Earning Power of Railroads,* 1910. Pp. 461. Price, $2.00. New York: J. H. Oliphant & Co., 1910.

Myers, G. *History of Great American Fortunes,* Vol. II. Pp. 368. Price, $1.50. Chicago: Chas. H. Kerr & Co., 1910.

The first third of the book contains a somewhat general and sketchy discussion of certain of the more important phases of the development of our industrial society, such as the seizure and spoliation of the public domain, the struggle of the workers for better conditions, and the passing of the middle class.

The remainder of the volume is devoted to the presentation of data, much of which has hitherto been unpublished, concerning the origin and growth of the Gould and Vanderbilt fortunes. The author's style is vigorous, sarcastic, pessimistic, and radical.

O'Donnell, F. H. *A History of the Irish Parliamentary Party.* Two Vols. Pp. xxi, 1002. Price, $5.00. New York: Longmans, Green & Co., 1910.

O'Shea, M. V. *Social Development and Education.* Pp. xiv, 561. Price, $2.00. Boston: Houghton, Mifflin Company, 1909.

Individual education constitutes the central thought of the first part of the book while Part II is devoted to social education proper. In Part I, the author has attempted to show the development of social attitudes and viewpoints from birth to adolescence. He lays particular emphasis on the anti-social nature which the natural man possesses and upon the necessity of an emphatic social education if a social viewpoint is to be secured. Even with the best of training, up to the age of twelve or thereabouts, children are extremely anti-social. Their problems are primarily personal, and their sympathies center in these personal problems rather than in the problems of a more social nature.

The discussions in Part II deal with the creation of an environment which will involve real social education. The chapters on education from a national standpoint, co-operation in group education, suggestion and imitation are particularly valuable in their bearing on the problem of social education.

Overlock, M. G. *The Working People.* Pp. 293. Price, $2.00. Worcester, Mass.: Blanchard Press, 1910.

The work centers about tuberculosis, its cause, character and remedy, although chapters are devoted to the more ordinary diseases, to sanitation, hygiene, over-exertion, industrial hygiene, city life, and other problems of wealth. The book is written from the outside with little realization of the actual economic questions which confront the man earning ten dollars a week. The book will, therefore, fail to appeal to this class of the community. It will, at the same time, fail of acceptance among scholars because of the failure to present facts or to state authorities.

Palmer, Frederick. *Central America and its Problems.* Pp. xiv, 347. Price, $2.50. New York: Moffat, Yard & Co., 1910.

This work is not intended to be an exhaustive study either of Central America or Mexico. The volume contains the notes of an able newspaper man, who has kept his eyes open and who has seen many things which often escape the notice of more highly trained investigators.

We know so little of the Central American situation that we must be grateful for any light that is thrown on it. Mr. Palmer's book offers a most excellent introduction to the subject, and will stimulate many readers to further inquiry into a group of problems of vital interest to the United States. It is to be regretted, however, that so competent an observer did not go more deeply into the subject. He is more interested in personal relations than in the analysis of underlying forces. It may be that in planning this work he felt that it was necessary first to attract the attention of the American public through a work replete with personal touches. If this be the case it is to be hoped that we may have from his pen a second volume dealing more fully with racial relations within the Central-American states and with the international relations in this section of the continent.

Philipp, E. L. *Political Reform in Wisconsin.* Pp. 253. Price, 50 cents. Milwaukee: E. L. Philipp.

"This is a history—not an apology or a defense," the author would have us believe, but the reader need not go far to discover that it is none of these. Primary elections, taxation reform and railway rate regulation are discussed. In each case it is claimed that the "reformers" began no new work, but perverted a steady development begun long before. The results of "reform" have been negligible. At this point the argument breaks down, especially in the portion treating of taxation. Though much interesting material is printed, especially touching the early granger legislation, the discussion is too biased to be accepted as "history" in any sense.

Plunkett, H. *Rural Life Problem in America.* Pp. xi, 174. Price, $1.25. New York: Macmillan Company, 1910.

Reid, David C. *Effective Industrial Reform.* Pp. 287. Stockbridge, Mass.: By the author, 1910.

The author maintains that our present centralized control of great wealth by a few men is bound to result in despotism, extravagance and luxury and these in turn in degeneracy. The remedy which the author sets forth in detail is the social ownership of industry through a form of partial individual subscription to the stock of the various industries. The scheme is in reality a modified form of Christian Socialism, based on individual capitalism. The author does not show how the average man would be financially enabled to subscribe to such schemes. The means which the author presents for maintaining control of industries also seem inadequate. Throughout the book, facts are poorly stated, and few authorities are cited.

Richardson, Bertha J. *The Woman Who Spends.* Pp. 161. Price, $1.00. Boston: Whitcomb & Barrows, 1910.

Women in the past were the producers of all economic goods; the women of the present have ceased to produce economic goods and have become largely the consumers and spenders. This change in woman's sphere from production to consumption forms the central theme around which the author builds the structure of her suggestive book. Women must be taught careful and judicious purchasing. The final chapter of the book deals with the author's panacea—accounts.

Roe, A. S. *China As I Saw It.* Pp. vii, 331. Price, $3.00. New York: Macmillan Company, 1910.

Like most travel books, this one is valuable because it gives the clear-cut first impression—something which always pales on closer acquaintance. The vividness of the pictures is heightened by the fact that the author has a woman's quickness of perception in seizing striking situations and contrasts. The letters—for such the work really is—have no plan or plot. They follow whither the journey leads.

Too often works of this sort touch only the coast towns, as the European visitor to the United States often gets no farther inland than Philadelphia or Baltimore, but this is not a fault of this work. Besides the regular points of call accessible by rail and steamer, side trips are taken from Chefoo and up the Yang-tze, and later an excursion into the interior of Shan-si. These give good pictures of the contrasts between the interior and the coast. On the whole, barring an occasional paragraph which seems to view the "celestial" as a barbarian, the book gives an excellent glimpse of Chinese life. Superstitions, funeral customs, temples, marriages, mule-litters, pidgin English and a host of similar subjects are described in word pictures of unusual vividness. The illustrations from photographs are exceptionally good.

Scholefield, Guy H. *New Zealand in Evolution.* Pp. xxii, 363. Price, $3.00. New York: Charles Scribner's Sons, 1909.

New Zealand, and some of the states of Australia, stand out pre-eminently as pioneers in the development of social legislation and the improvement of living conditions. The economic factors lying back of these improvements constitute an interesting story which the author has presented in a most acceptable manner. The book is far less partisan than the average work dealing with the same problem. The author begins with the history of the economic development of the island, treating of the fight for British sovereignty, of the development of gold and coal mining, the waste of the forests, and the growth of the wool and various other important New Zealand industries. The agricultural problems are next analyzed, the land policy receiving particular attention. The Single Tax Theory has been put into operation in New Zealand, and while it has not been carried to its logical conclusion, the spirit which dominates it has directed the land policy. In dealing with the industrial problems, the author lays particular emphasis upon the dissatisfaction which has arisen with compulsory arbitration because of the subserviency of the courts to the financial interests. The book is well written, and is a welcome addition to the story of New Zealand.

Schroeder, T. (compiled by). *Free Press Anthology.* Pp. viii, 266. Price, $2.00. New York: Truth Seeker Publishing Company, 1909.

Stelzle, Charles. *The Church and Labor.* Pp. 95. Price, 50 cents. Boston: Houghton, Mifflin Company, 1910.

This little volume is published in the "Modern Religious Problems" series, and is intended as a handbook for ministers and social workers. The church will hardly relish some of the criticisms made about its attitude towards labor, but the author speaks with a knowledge of the facts and is able to interpret them in a prophetic spirit. The book is written largely from the point of view of labor and will, if given the circulation it merits, render no small service in bringing about more cordial relations between organized labor and the church.

Stopes, Marie C. *A Journal from Japan.* Pp. xiv, 280. Price, 7/6. Glasgow: Blackie & Son, Ltd., 1910.

Trenholme, N. M. *An Outline of English History.* Pp. xii, 122. Price, 50 cents. Boston: Ginn & Co., 1910.

This is a helpful topical treatment prepared by the Professor of the Teaching of History of the University of Missouri. Its aim is to provide a companion and guide for students using Professor Cheyney's excellent text-book of English History. Political, social and economic aspects are all treated.

White, B. *The Book of Daniel Drew.* Pp. x, 423. Price, $1.50. New York: Doubleday, Page & Co., 1910.

The diary of Daniel Drew was dug up from the rubbish in an old attic and put in finished form. It tells the life story of this most unique and interesting Wall Street speculator. It abounds in apothegms and epigrams, is colloquial in style and dramatic in its recitals.

White, William A. *The Old Order Changeth.* Pp. 266. Price, $1.25. New York: Macmillan Company, 1910.

The author has outlined in a remarkable way the forces which are at present breaking down the political and industrial traditions which have so seriously hindered social progress. The book begins with the portrayal of the original democracy in America, shows its modification due to the assumption of political power by industrial leaders, indicates the progress which American cities have recently made in democracy and points to the schools as the mainspring of democracy. The book is written by a man who has come into intimate contact with political and industrial forces, and it reflects throughout the attitude of a practical mind dealing with theoretical questions. It might well be characterized as needlessly or even dangerously optimistic, for the impression derived from the reading of certain chapters is that if we will but let things work themselves out, adjustment will be automatically secured. On the whole, however, the work is stimulating because it is based upon a deep insight into the modern, industrial and political world, and an abiding faith in the fundamental ability and intelligence of the American people.

Who's Who in America. Vol. VI, 1910-1911. Pp. 2468. Price, $5.00. Chicago: A. N. Marquis & Co., 1910.

This volume, edited by Albert N. Marquis, gives a brief, crisp, personal sketch of every living man and woman in the United States whose position or achievements make his or her personality of general interest, giving for those who are most conspicuous in every walk of life, the parentage, the date and place of birth, education, degrees, marriage, positions and achievements, politics, societies, clubs, business, occupation, etc.

The appended addresses also constitute a valuable feature. No other publication has ever attempted the difficult task of finding and furnishing the addresses of prominent Americans in all parts of the world. "Who's Who in America" not only tells who the leading people are and what they have done, but also tells where they are at the present time and what they are now doing.

The completeness and reliability of the volume make the book indispensable to every one who aims to keep abreast of the times. It answers, instantly, thousands of questions of every-day import—questions for which answers can nowhere else be found.

The book has been thoroughly revised and brought down to date. The present volume contains 17,546 sketches, 2,831 of which have not appeared in any previous edition. It is compact in treatment, handy in arrangement, convenient in size.

Wilcox, D. F. *Municipal Franchises.* Pp. xix, 710. Price, $5.00. Rochester: Gervaise Press, 1910.

Wilder, Elizabeth, and Taylor, Edith M. *Self Help and Self Care.* Pp. 134. Price, 75 cents. Boston: Small, Maynard & Co., 1910.

Wilkinson, M. *The Latest Phase of the League in Provence, 1588-1598.* Pp. vi, 84. Price, $1.50. New York: Longmans, Green & Co., 1909.

This little volume needs a secondary or explanatory title, for the reader soon finds that it is made up of extracts from documents drawn mostly from the archives of Marseilles, Aix and Carpentras, loosely strung together by editorial comment so as to suggest a fairly connected account of the subject. More can scarcely be said of the author's work. The book is not a history of the "Last Phase of the League," though to the initiated it affords excellent material for such a history. The absence of the usual table of contents, chapter headings and index are further evidence that Mr. Wilkinson felt that, having gone to the trouble of getting the documents, making his selections, and seeing them through the press, he had fulfilled every obligation. This is the more unfortunate because we need a history of this phase of the religious wars in France, and Mr. Wilkinson's intimate knowledge of the sources should have given us the work.

REVIEWS.

Appleton's New Practical Cyclopedia. A New Work of Reference Based Upon the Best Authorities, and Systematically Arranged for Use in Home and School. Edited by Marcus Benjamin, Ph.D., Sc.D., F.C.S., Editor of the United States National Museum, Washington, D. C., Assisted by Arthur E. Bostwick, Ph.D., Librarian of the St. Louis Public Library; Gerald van Casteel, Chief of Editorial Staff, and George J. Hagar, Expert Compiler and Statistician, with an Introduction by Elmer Ellsworth Brown, Ph.D, LL.D., United States Commissioner of Education. Six volumes. Pp. 3040. Price, buckram, $18.00; half morocco, $24.00. New York: D. Appleton & Co., 1910.

Having had experience in creating six cyclopedias varying in subject and scope, Appleton's have brought out a reference work for use in the home and school. It is properly designated "practical" instead of popular; for, while there are but six volumes, every effort has been made to create a comprehensive and concise work instead of a superficial one. The articles are written in non-technical language that may be understood by school children and by adults of average education. It is not a cyclopedia for the specialist, but for the general student and general reader. The low price of the six volumes will permit the work to be secured by all schools and prosperous homes and will greatly increase its "practical" value.

The character and the educational purpose of this "practical" cyclopedia, as contrasted with the many-volumed expensive works that seek to include an entire reference library in a single set of books, are well stated by the editor in the following quotation from the preface:

"The following of the conventional idea of what a cyclopedia should be, rather than a consideration of the actual use to which the work is to be put, has too often resulted in a collection of learned treatises, useful to specialists, but of little service to most of those who refer to their pages for information. The cost of such works is to many prohibitive; the immense amount of detail which they contain is wearisome, and too often obscures the information which is sought. Except in public libraries they are apt to be carefully guarded in the bookcase instead of being used currently by the owner and his family, and they give little aid in the habit of acquiring exact knowledge upon current topics, which, if consistently followed, is a most liberal and practical form of education. At the other extreme, are the briefer 'popular' cyclopedias, hurriedly compiled from whatever sources are available, with scanty, and inappropriate illustrations, and with a few showy 'selling points,' but with no attempt at serious preparation. The publishers of 'Appleton's New Practical Cyclopedia' feel that there is a place for a brief, serviceable work of reference which combines moderate size and low price with comprehensiveness, accuracy, and authority."

In addition to the characteristics of conciseness, comprehensiveness and low price, the "practical" value of the work is increased by two other features—the illustrations and the indexes. The editor claims, with apparent accuracy, that "the present work is unrivaled in the number, range, and

appropriateness of its illustrations." There are over 1,500 textual illustrations, 24 full-page maps, 24 full-page colored plates, and 24 black and white plates consisting of group and graphic illustrations. The pictures are numerous, but are not a conspicuous part of the volume; they are, for the most part, reproductions of drawings that illustrate and supplement the text. The half-tones and colored plates are not so numerous nor so conspicuous as to make them "selling points." The maps are doubtless as good as could be included in a cyclopedia of the size and price of the present work; but they are on a small scale and the data upon them are presented in the manner that has long prevailed among American map-makers. Possibly in future editions of the work, the publishers may feel financially justified in substituting a higher grade of maps.

The two indexes add much to the usefulness of the cyclopedia. In an analytical index is presented, "in proper alphabetical order, subjects which are not assigned individual articles in the body of the work, but which are treated as parts of articles found under some other key word." Thus if a subject is not found upon consulting the body of the work, it may be located by referring to the analytical index. In the synthetical index are grouped, under appropriate headings, all the articles bearing upon each important topic. Thus, from the index, the student may readily find all the information upon each subject discussed in the cyclopedia.

In a word, the work is a practical cyclopedia of moderate scope; and it seems probable that the publishers will realize their "hope that the work will be found especially helpful to the student, and to the busy man wishing to obtain quickly the essential facts upon the subject in which he is interested."

EMORY R. JOHNSON.

University of Pennsylvania.

Cory, G. E. *The Rise of South Africa.* Vol I. Pp. xxi, 420. Price, $5.00. New York: Longmans, Green & Co., 1910.

Mr. Cory's book is excellent. It represents the beginning of a work which is to reach four volumes. Seventeen years have been spent in the work, which, though undertaken as a recreation, shows the marks of thoroughness. The style is flowing, citations accurate and the point of view judicial. The discussions in the latter part of the book naturally include race conflicts in which especially at this distance of time the truth is hard to ascertain since all accounts are partisan. Mr. Cory has shown himself in these chapters (especially the one treating the affair of Slagter's Nek) to be both fair and sympathetic.

The history of South Africa begins in the Age of Discovery. The Cape was first an obstacle to be rounded, later a victualling station, then an outpost, with the native problems that confronted the conquerors in all parts of the globe. The early struggles, up to the French Revolution, occupy only the first two chapters. The rest of the volume covers the period up to 1820—a period complicated by internal discussions, native wars and successive

shiftings of sovereignty between the Netherlands and England. The latter period strongly parallels in social changes the conditions in Louisiana, Texas and California before the advent of the settlers from the United States. The old dreamy, patriarchal society struggles against the new forces which are to clear the way for the bustling, progressive civilization which is to take its place. In working up this period, Mr. Cory has relied not only on documentary evidence, but upon the testimony of old settlers. He presents also an excellent series of photographs showing the chief places to which reference is made. No one who is interested in frontier life can fail to be pleased by this interesting narrative.

CHESTER LLOYD JONES.

University of Wisconsin.

A Documentary History of American Industrial Society. Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Prepared under the auspices of the American Bureau of Industrial Research, with the co-operation of the Carnegie Institution of Washington. With Preface by Richard T. Ely and Introduction by John B. Clark. Complete in ten volumes, with supplement to Vol. IV. Price, $50.00. Cleveland, Ohio: The Arthur H. Clark Company, 1910.

This "Documentary History"—of which the first six volumes have now appeared—outranks all other publications upon American labor, both because of the value of the documents to students of history, and because of the illuminating economic analyses by which the volumes as a whole and the several subdivisions are introduced. Professor Commons and his associates have placed all students of the history and economics of labor under lasting obligation; the material contained in these ten volumes—in part rescued from early destruction, and in large share brought forth from places so obscure or so inaccessible as to have kept the information out of the reach of even the serious investigator—makes a permanent addition to the equipment of American scholars.

The creation of such a set of books as these would have overtaxed the ability and resources of the individual investigator. The financial support of an organization, the co-operation of collaborators and the aid of a corps of assistants were required. It was the American Bureau of Industrial Research, conceived and organized by Professor Richard T. Ely, that made possible the work of Professor Commons and those who aided him; indeed, as Professor Ely explains in the preface to the "Documentary History," it is the outgrowth of his book on "The Labor Movement in America" and of his subsequent efforts to secure the materials necessary for the preparation of a comprehensive history of labor. "The Labor Movement" published in 1886 was considered by its author "merely as a sketch which will, I trust, some day be followed by a book worthy the title 'History of Labor in the New World.'"

After Professor Ely had made a large collection of books, pamphlets and newspapers, he "decided finally that a work of the scope I had planned was beyond the power of one man to accomplish, and I set myself, therefore, to secure by the co-operation of many what could not be accomplished by one." Having received the financial support of Mr. V. Everit Macy, Mr. Robert Fulton Cutting, Mr. Justice Henry Drugo, of New York; Mr. Stanley McCormick, of Chicago; Captain Ellison Smyth, of Greenville, N. C., and others, the American Bureau of Industrial Research was organized in March, 1904, and Professor John R. Commons was secured to direct the work of the bureau. After the work of the bureau was well under way it received a small appropriation from the Department of Economics and Sociology of the Carnegie Institution, and Professor Commons, in 1909, became one of the board of twelve men that have for some years been collaborating with that department of the Carnegie Institution in the preparation of an economic history of the United States. Thus the "Documentary History," as stated on the title page, has been "prepared under the auspices of the American Bureau of Industrial Research, with the co-operation of the Carnegie Institution of Washington." The Bureau and the publishers have thus far spent about $75,000. The Bureau has secured the data from which Professors Commons and Ely are to write and interpret the history of labor, or of industrial society, in America. The ten volumes of "Documentary History," now appearing, are a by-product of the industry whose finished work will be the systematic and interpretative history of American labor.

The first task undertaken by the Bureau of Industrial Research was to locate materials, and a thorough search was made through libraries and private collections in different parts of the country. An extensive correspondence was carried on with libraries to ascertain the titles and whereabouts of publications. Next, as much as possible of the discovered material was collected in Madison, Wisconsin, the headquarters of the Bureau. In case a printed copy of rare and important documents or articles could not be secured, transcripts were made. "Along with the collecting was carried on the equally arduous and important work of classifying and cataloguing. For this, a large staff of stenographers, clerks and copyists was necessary. A card catalogue has been made of all books, manuscripts and pamphlets dealing with labor conditions and labor movements from 1815 to 1875; and a second card catalogue for those from 1875 to the present. Another card catalogue has been made of all labor papers and papers sympathetic or actively hostile to labor in the country so far as known. This information has been classified in two ways, first under the name of the paper and second under the name of the library where the paper is to be found. Another card catalogue lists all the material to be found in Madison, and finally a card catalogue has been made of all articles transcribed from documents or newspapers in other libraries with a notation where they are to be found."

The wide scope and great value of the materials thus collected and catalogued led Professor Commons to suggest "that the most important documents be printed for the benefit of scholars to whom the collection itself

was not accessible." The suggestion was adopted by the directors of the Bureau and the "Documentary History" was the result. The scope and main subdivisions of the material contained in the ten volumes (eleven counting the supplement to Volume IV), and the names of those who have edited and interpreted the documents contained in the several volumes are shown by the following list of volume, titles and authors:

Vols. I-II. "Plantation and Frontier;" by Ulrich B. Phillips, Ph.D., Professor of History and Political Science, Tulane University.

III-IV. "Labor Conspiracy Cases, 1806-1842;" by John R. Commons, A.M., Professor of Political Economy, University of Wisconsin, and Eugene A. Gilmore, LL.B., Professor of Law, University of Wisconsin.

V-VI. "Labor Movement, 1820-1840;" by John R. Commons and Helen L. Sumner, Ph.D., of the U. S. Bureau of Labor.

VII-VIII. "Labor Movement, 1840-1860;" by John R. Commons.

IX-X. "Labor Movement, 1860-1880;" by John R. Commons and John B. Andrews, Ph.D., Executive Secretary of American Association for Labor Legislation.

Volume X also includes the "Exhaustive Analytical Index."

Volume I opens with a general preface, fourteen pages in length, by Professor Ely. Then follows a general introduction, thirty-one pages long, by Professor John B. Clark, of Columbia University, who successfully sketches in broad outline the main phases of the industrial evolution of the United States. Professor Clark's essay emphasizes the truth that "a key to the understanding of American history and of all history is furnished by a knowledge of economic events," and it is his opinion that the "work undertaken by Professors Ely and Commons and their associates enters what is possibly the richest of all comparatively unworked fields of history and promises to yield especially large results in economics."

Professor Clark's general introduction to the set of volumes as a whole is followed by Professor Ulrich B. Phillips' introduction to Volumes I and II, which contain classified documents concerning "Plantation and Frontier, 1649-1863." Professor Phillips has an enviable reputation as a student of the economic history and life of the South; and his thirty-five-page introduction gives an admirable statement of the rôle of the plantation in American industrial evolution.

"The plantation system," Professor Phillips says, "was evolved to answer the specific need of meeting the world's demand for certain staple crops in the absence of a supply of free labor. That system, providing efficient control and direction for labor imported in bondage, met the obvious needs of the case, waxed strong, and shaped not alone the industrial régime to fit its requirements, but also the social and commercial system and the political policy of a vast section; and it incidentally trained a savage race to a certain degree of fitness for life in the Anglo-Saxon community. Through the Civil War and political reconstruction of the South, accompanied by social upheaval, the plantation system was cut short in the midst of its career. It only survives in a few fragments and in forms greatly changed from the

characteristic type. Both the frontier and the plantation systems can now be studied in the main only in documents."

The character of the documents which occupy most of Volume I and all of Volume II, are indicated by the titles under which they are grouped—plantation management, plantation routine, types of plantations, staples, supplies and factorage, plantation vicissitudes, overseers, indented labor, slave labor, slave trade, fugitive and stolen slaves, slave conspiracies and crimes, negro qualities, free persons of color, poor whites, the immigrant, migration, frontier settlement, frontier industry, frontier society, manufacturing, public regulation of industry, artisans and town labor.

Volumes III and IV contain the reports of the court proceedings in fourteen of the eighteen labor conspiracy cases in the United States, beginning with the Philadelphia Cordwainers' case in 1806 and ending with the decision of Justice Shaw, of Massachusetts, in Commonwealth *v.* Hunt, 1842. The four cases not reprinted are those of which reports may be found in the larger public libraries—the Master Ladies' Shoemakers, 1821; New York Hatters, 1823; Geneva Shoemakers, 1835; and Commonwealth *v.* Hunt, 1840 and 1842.

The Philadelphia Cordwainers' case, 1806, and several others are presented by reprinting, without abbreviation, the stenographic report of the testimony, argument, and charge to the jury. The report of the Philadelphia Cordwainers' case occupies 190 pages, and the remainder of Volume III is taken up with the report of the trial of the Baltimore Cordwainers, 1809, and of the New York Cordwainers, 1810. These reports are rich mines of information regarding the conditions of labor and industry at the opening of the last century. The cases reported in Volume IV are the Pittsburgh Cordwainers, 1815; Buffalo Tailors, 1824; Twenty-four Journeymen Tailors, 1827; Philadelphia Spinners, 1829; Chambersburg Shoemakers, 1829; Baltimore Weavers, 1829; Hudson Shoemakers, 1836; Thompson Carpet Weavers, 1834-1836; Taylor *v.* Thompsonville, 1836; Twenty-one Journeymen Tailors, 1836; and Philadelphia Plasterers, 1836. The editor states that "All of these documents are rare, many of them excessively so. In several cases, but one copy has been found after years of thorough and extensive search in all the libraries and private collections of the country and through correspondence. . . . In a few cases reliance has been necessarily placed upon current newspaper reports."

Professor Commons introduces Volumes III and IV by an exceptionally interesting analysis of the several steps in the evolution of industry and of the status of labor in the manufacture of boots and shoes from "the stage of the itinerant shoemaker working up the raw material belonging to his customer in the home of the latter, to the stage of the settled shoemaker working up his own material in his own shop;" and on through the various stages by which the present system of factory manufacture and wholesale and retail trade has been reached. The analysis closes with the generalization "Thus have American shoemakers epitomized American industrial history. Common to all industries is the historical expansion of markets. Variation

in form, factors, and rates of progress change the picture, but not vital force. The shoemakers have pioneered and left legible records. Their career is 'interpretative' if not typical."

The documents contained in Volumes V and VI illustrate the progress of the labor movement from 1820 to 1840. The general changes in the economic status of labor during these twenty years are explained in an introduction written jointly by Professor Commons and Miss Helen L. Sumner. The introduction, which is preceded by a chart showing the movement of wholesale prices from 1820 to 1898, opens with the statement that the movement in prices gives a clue to the labor movement of the time.

"Each upward turn of the curve of prices," say the authors, "points to a period of business prosperity, each pinnacle is a commercial crisis, and each downward bend is an index of industrial depression. During a time when the level of prices is rising, employers are generally making profits, are multiplying sales, are enlarging their capital, are running full time and overtime, are calling for more labor and are able to pay higher wages. On the other hand, the cost of living and the hours of labor are increased and workmen, first as individuals, then as organizations, are impelled to demand both higher wages and reduced hours. Consequently, after prices are well on the way upward, the labor movement emerges in the form of unions and strikes, and these are at first successful. Then the employers begin their counter organization, and the courts are appealed to. The unions are sooner or later defeated, and when the period of depression ensues, with its widespread unemployment, the labor movement either subsides or changes its form to political or socialistic agitation to ventures in co-operation or communism, or to other panaceas. This cycle has been so consistently repeated, although with varying shades and details, that it has compelled recognition in the selection and editing of the documents of this series."

The reasons why the editors close the first period of the history of the labor movement with 1820 and divide the sixty years following 1820 into twenty-year periods, and group the illustrative documents accordingly, may best be stated mainly in their own concise language:

1. "The colonial period, in its economic characteristics, extends to the decade of the twenties in the nineteenth century. This is the dormant period of the labor movement, although a slight awakening appears as a result of the extension and unification of the markets." In this period is begun the effort to enforce the principle of the closed shop and to control the rate of wages; this brought on the conspiracy cases in the courts, as reported in Volumes III and IV.

2. "The period from 1820 to 1840 may rightly be named the Awakening Period of the American Labor Movement" . . . "that of the merchant-capitalist or merchant-manufacturer with its extension of waterways, highways and banking facilities, and its awakening of labor as a conscious movement." . . . It "reached its height in 1835 and 1836 and its collapse in 1837. This period is covered in Volumes V and VI."

3. "The two decades, 1840 to 1860, Volumes VII and VIII, retain econom-

ically the characteristics of the merchant-capitalist period, but they are clearly marked off by the new phenomenon of philosophical, humanitarian and political protest. This protest, diverted into the anti-slavery contest after 1852, gave way to a 'pure and simple' trade union movement in 1853."

4. It was in "the two decades, 1860 to 1880, Volumes IX and X, with the market nationalized by the railway and protected by the tariff, that invention in the technical processes of industry came to have profound effects. This was a truly revolutionary period in which the merchant-capitalist system was giving away to the factory system."

The current events in the history of labor—those that have occurred since the full establishment of the factory system about 1880—are not covered by the documentary history which ends with 1880.

Volumes I to VI and the supplement to Volume IV have appeared at the time of the writing of this review; Volumes VII to X are being printed and will shortly be issued. The documents have been ably edited and are being published in attractive and enduring form. Type, paper and press work are excellent. The Bureau of American Industrial Research is, indeed, to be commended for giving historians and economists the assistance which they will derive from this most helpful *Documentary History*.

EMORY R. JOHNSON.

University of Pennsylvania.

Dyer, Henry. *Japan in World Politics.* Pp. xiii, 425. Price, 12/6. Glasgow: Blackie & Son, 1909.

Like his previous work, "Dai Nippon," this study by Professor Dyer gives a mass of information not easily available to any but those who have spent many years in the far east. The historical part is chiefly a summary of material included in the previous work. So long as the discussion rests on affairs in Japan, the author's familiarity with his subject prevents slips. When a wider field is entered mistakes become frequent. The Spaniards, for example, are said to have sent eight ships yearly between the Philippines and Mexico (p. 16); they sent but two. They are charged with massacring all Chinese in the islands on two different occasions (p. 33). History records no such event. On page 265 we learn that the "Monroe Doctrine" "forbade any European or Asiatic Power effecting a lodgment on South American soil." Examples could be multiplied. There are also numerous digressions which, in spite of the breadth of the title of the book are hard to justify.

Japan's mission is important. In the author's opinion it will prove the universality of civilization, harmonize eastern and western thought, regenerate China and Korea and promote the peace and commerce of the East. It is needless to say that the author is frankly pro-Japanese. He sees no faults to mention except a degree of personal untrustworthiness, though this cannot be charged against the government. The nation is peace-loving, and no fear need be held that it will provoke war with any of its neighbors. The treaties entered into since the Russo-Japanese War represent not paper

agreements but national policy. If a war with the United States should break out, however, the Philippines would be an easy prey to Japan. A review of Japanese foreign relations in detail and a discussion of the assimilability of the Japanese conclude the book.

CHESTER LLOYD JONES.

University of Wisconsin.

Gray, J. C. *The Nature and Sources of the Law.* Pp. xii, 332. Price, $1.50. New York: Columbia University Press, 1909.

Professor Gray classifies himself with those "who are considering not what fancies may be dreamed in order to tabulate the facts in accordance with some preconceived system," but who seek to discover "what the facts really were and are." And here his professed task is to call attention "to the analysis and relations of some fundamental legal ideas rather than to tell their history or prophesy their future development."

The Austinian theory of law as the command of a sovereign is rejected. The author knows no sovereign. The state is a useful personified abstraction invented to give title to the acts of the ruling persons who are the actual sources of authority. It is, however, needless to invent another abstraction to which to attribute a fictitious command. Law first arises when the judicial authority of a political community lays down a rule in deciding controversies. On any given point there is no law until the court declares it. Custom is not law, because custom is practice, and law is opinion. Statutes are not law, for they are not self-interpreting. "Their meaning is declared by the courts, and it is with that meaning as declared by the courts and with no other meaning that they are imposed upon the community as law." A judicial decision is at the same time a law and an important though not controlling source of other laws. Though in fact a court is free to make a law for each particular case as it sees fit, custom, legislation, precedent and the opinion of experts are given legal recognition by the courts as sources of future decision. Each rule declared by the court is *a* law. *The* law is the body of rules so declared. Yet how this congeries of particulars become fused into a conceptional unity is not made manifest.

Professor Gray has no relish for fictions or abstractions. He seems drawn into much of his discussion reluctantly, impelled solely by a desire to clear away the dust raised by his predecessors. And the merits of his work as a contribution to the philosophy of law will be found mainly in his destructive criticism of the speculations of others. His own comment is suggestive. "Especially valuable is the negative side of analytical study. On the constructive side it may be unfruitful, but there is no better method for the puncture of wind-bags." Such a puncturing he gives us in language always refreshing and with a logic that never trips.

THOMAS REED POWELL.

University of Illinois.

Hughes, Charles Evans. *Conditions of Progress in Democratic Government.* Pp. 123. Price, $1.15. New Haven: Yale University Press, 1910.

The lesson that progress in political affairs is not a matter of electoral machinery is a hard one for Americans to learn. Governor Hughes insists that democratic institutions, if they are to succeed, must be a part of the life of the individual. The state cannot live without individual interest. An increase in material prosperity which induces disregard of the civic duties breeds moral unsoundness. "The peril of this nation is not in any foreign foe! We, the people, are its power, its peril, and its hope!" Good-will will never do the work of will. Fear for business interests, friendship, party loyalty, none of these must be allowed to blunt the citizens' zeal for the common good.

In the face of increasing governmental functions we must have an increase in the efficiency of our governmental machinery. Inefficient legislation must be eliminated and, perhaps, most important, the administration of the law by the executive must be improved. The dignity and responsibility of public office must be increased. The party system too has its advantages and its perversions. Mr. Hughes emphasizes the importance of a two party system. He believes it is firmly established in this country. It brings the advantage of focussing public opinion with the danger of creating a party fetish. There follows an excellent discussion of the independence of action which should be preserved even within party lines. The discussion of the difference between faction and party recalls the writings of Burke. The closing pages point out the importance of differentiating local and national issues, the advantages to be reaped through civil service reform, corrupt practices acts and general education which latter after all is the first condition of a real republican government.

These were lectures to college men, but they are lectures for every citizen. There are few of us who, after reading them, will not doubt whether even we are doing all we should for the common weal.

CHESTER LLOYD JONES.

University of Wisconsin.

Hughes, Edwin H. *The Teaching of Citizenship.* Pp. xv, 240. Price, $1.25. Boston: W. A. Wilde Company, 1909.

This is a book of suggestions to teachers for increasing our national spirit and imparting warm-blooded patriotism to the citizens of the next generation. The purpose of the book as stated by the author, is "to suggest certain natural and human starting points for the teaching of patriotism and citizenship" whereby teachers may "prepare their charges by certain mental, as well as by emotional exercises, to catch the thrill, to appreciate the privilege, and to take up the duty of good citizenship." The book first shows the need of such teaching by every teacher—no matter what his department—in this age of alleged declining patriotism and commercialism. The difficult reform

of placing more stress on types of peaceful public usefulness as substitutes for the appeal formerly made by the sacrifice of war, must be accomplished. Suggestions of various lessons follow with concrete examples to aid the teachers such as the lessons of instinct, lessons of breadth,—which is not incompatible with patriotism, but rather an outgrowth of true patriotism—lessons of cost, of protection, of benefit, of character and duty.

Under the last head emphasis is placed on the duty of political activity —especially in voting, in participation in the jury service, caucus and primary, and holding office, and in giving an honest administration of public funds. The book is a much-needed help in pointing out our duty of arousing within children a true national spirit which will demand and secure efficient government, and Mr. Hughes has given teachers many new ideas for the practical teaching of citizenship in the schools.

JANNETTE STERN.

New York City.

King, Irving. *The Development of Religion.* Pp. xxiii, 371. Price, $1.75. New York: Macmillan Company, 1910.

Once in a while in every field a volume appears which really breaks new ground and furthers the development of human thought. Such is the book now under review. Professor King seeks to give, as it were, the natural history of religion. His volume, as his sub-title indicates, is a study in anthropology and social psychology. Man has not increased his mental capacity, but has been building up a complex of psychical concepts and activities from generation to generation. He has sought to put a value on the various phases of human experience. This valuating attitude is a common element of all religions. Religion is a social development, growing out of association in the group. It has not merely molded the previous social institutions, but "is rather an organic part of the general social meilieu."

From this beginning, the development of various religious concepts is traced from the belief in a mysterious power or manitou, with an excellent chapter dealing with the relation of magic and religion, the origin of the belief in divine beings and its development, the problem of monotheism and the theory of the supernatural.

In barest form this is the outline of the ground Professor King seeks to cover. He is not attempting to bolster up any theological propositions, but rather to trace actual development. The statement that the social act becomes religious may disturb many conservative people, also the statement that at any stage of culture relative primitive types of action are likely to occur, and hence programs which bear the name of religion always need careful inquiry. Religion, in other words, according to Professor King, is as normal and natural a part of man's social development as is the state, family, or the school. It is a growth from within them, not something injected from without. Religion is essentially a faith, "that the universe, in which we have our being, contains the elements that can satisfy in some way our deepest

aspirations." The author is a little hazy about the starting point of religion in man, but his account of its development is one of the best the reviewer has ever seen.

CARL KELSEY.

University of Pennsylvania.

Laprade, W. T. *England and the French Revolution, 1789-1797.* Pp. 232. Baltimore: Johns Hopkins Press, 1909.

Despite its broad title, this study is in the main confined to two questions, both of which are intimately connected with the French Revolution. The first is the breaking up of the solidarity of the Whig opposition; the second, the foreign policy of Pitt with respect to France.

The breach in the ranks of Fox's supporters appears first in the defection of Burke. The gifted orator's disappointment and irritation at the indifferent, even critical, reception of his *Reflections*, etc., by his own party, together with maliciously exaggerated reports of secret agitations in England, served as the lever which Pitt so adroitly used to disrupt the opposition. Casual remarks by Fox were insinuatingly misconstrued as implying secret support of English agitations for reform, or worse, and in this way the Whig leader was discredited while the aristocratic element of his party was made to feel that their material and class interests would be best served by Pitt. This appeal was the more effective, because with it there came alluring offers of office from the astute prime minister to the more influential among them. Loughborough, Windham and Portland were all tempted. By winning over this element of the Whigs, Pitt was able to rid himself of that element in his own party represented by Thurlow, which stood in the way of his complete personal control of the administration. The story of how these things were done and the manner in which the consequent alignment of parties worked out is very well told. Incidentally, Dr. Laprade points out (pp. 62-66) the difference between the real plan for the realignment and one of doubtful authority long accepted by historians.

The second part of the work does not show the same mastery of the material. The presentation is too distinctively from the standpoint of English parliamentary conditions. Even the diplomatic sources do not appear as fully as one might wish, and there seems to be an inadequate appreciation of Grenville's part in the foreign policy of the period. (Cf. p. 30, *et passim*, and contrast Dr. Adams' *The Influence of Grenville on Pitt's Foreign Policy.*) The conclusion that Pitt forced the war on France to keep in office, and because he saw an opportunity to reduce the power of France and aggrandize England is too sweeping, and fails to note the deeper and more complex motives. Causes much deeper than the personal motives of the prime minister were at work. The opening of the Scheldt was more than a shuttlecock for the play of ministers. Treaty rights were involved, says Dr. Laprade, but why not draw attention also to the fact that in this matter the all-powerful British commercial interests were deeply concerned. The great contest which marks the final struggle for colonial and commercial supremacy

between France and England has deep-seated causes which the author neglects too much in his interest in the diplomatic game.

Moreover, at a time when the overthrow of the social and economic order in France was the universal topic of discussion, one might reasonably expect some reflection of economic conditions in England in a study with this title. But apart from two pages (133-4) on the financial crisis resulting from the war, and one page (160) on the effect of the war on food prices, there is no treatment of this side of English history in relation to the French Revolution. The statement (Preface, *et passim*) that the English societies and organizations for reform were due to conditions in England itself rather than to outside influences is, when based upon the research the author has plainly given to the subject, a distinct contribution, but it is far from sufficient in a work purporting to be so broad in its scope. Indeed, in the interests of accuracy, a study so exclusively related to Pitt's policy ought well be more narrowly defined in the title.

W. E. Lingelbach.

University of Pennsylvania.

McConnell, Ray M. *The Duty of Altruism.* Pp. 255. Price, $1.50. New York: Macmillan Company, 1910.

In the first or critical part of his book, "The Duty of Altruism," Mr. McConnell undertakes an investigation to ascertain whether there has yet been discovered any satisfactory rational ground for the duty of altruism, the obligation to serve the interests of others rather than one's self. Taking up in turn the various grounds for obligation offered by theology, metaphysics, law, logic, psychology, physiology and evolution, he rejects all in turn; the religious and metaphysical, because they are transcendental rather than empirical or scientific; the legal, because they are based on external restraint; the logical because they depend on premises seemingly gratuitous; and the scientific, because they are shown to be explanations of, rather than a basis for, morality.

The constructive part of the book shows that egoism and altruism do not rest on rational grounds, are not matters of reason, but are rather phenomena of the will which is shown to be the fundamental thing in every individual with the intelligence or reason secondary and subservient to it. Altruism is not the result of any process of reasoning, but is an achievement of the will which is purely a product of nature. In the normal man, this will expresses itself in a will to live the largest life with full activity of the senses, the æsthetical, intellectual and social nature of man. The basis of altruism then rests on the fundamental tendency of man towards an enlargement of self, the will to live within and through others. The book is clear, systematic and convincing, and reaches conclusions which lead to individual freedom and tolerance.

Amey B. Eaton.

Providence, R. I.

McLaughlin, James. *My Friend the Indian.* Pp. xi, 416. Price, $2.50. Boston: Houghton, Mifflin Company, 1910.

All who are interested in that race of men which has been displaced by white men "in carrying out the immutable law of the survival of the fittest," in the development of American civilization, will welcome this book from the pen of James McLaughlin, who for thirty-eight years has lived among the red men of the Northwest, serving as Indian agent at the Devil's Lake and Standing Rock reservations from 1871 to 1895 and as United States Indian Inspector from 1895 to the present. Perhaps no other man has been instrumental in carrying through so many "treaties" and "agreements" with the Indians. To him also the government is indebted for much of the improvement in the conduct of Indian affairs.

The book is written chiefly in autobiographical style, which gives a vividness to his narrative which far surpasses that of the mere descriptive historian. The story is told largely from the Indian's point of view, especially such events as the annihilation of Custer's troops at the battle of the Little Big Horn, which he declares to have been "Not a massacre, but a battle."

The scant appreciation which the author has for the work of ethnologists who have studied tribal life among the Indians should not detract from the value of the ethnological and sociological material which he furnishes. His work abounds in interesting descriptions of Indian village life, social and religious customs, dances, family organization, etc. His frank criticism of the government in its treaty-breaking policy and its paternalism, and his plea for "giving the Red man his portion," will be read with great interest by all who seek the Indian's good. Perhaps the title, "My Friend the Sioux," would have been a little more appropriate for a volume dealing almost wholly with the Indians of the Dakotas.

J. P. Lichtenberger.

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Odum, H. W. *Social and Mental Traits of the Negro.* Pp. 302. New York: Longmans, Green & Co., 1910.

Purporting to be based upon a special inquiry, this study is distinctly disappointing. In style it is rambling and verbose, with constant repetition. In few places is concrete evidence given, while chapter after chapter is couched in the general terms so characteristic of most discussions of the Negro. The author is capable of better work. Hailing from Mississippi, he is evidently very familiar with many phases of Negro life, is friendly in his attitude, and gives reason to hope that future studies will avoid the generalities so conspicuous in this study.

The schools, the church, fraternal orders, home life, crime, social status, relation of emotions to conduct make up the bulk of the volume, to which is added "An Estimate of the Negro" which is really a discussion of the economic situation.

Dr. Odum believes that the first thing is to understand the Negro. He

recognizes the responsibility of the whites. He sees that the schools have been unsatisfactory, that the white church should take more interest in the Negro; and he fears that the great development of lodges is interfering with the church. In the low standards of home life and personal conduct he finds constant challenge to normal progress. In the music of the Negro he finds much of promise.

The question is not whether the Negro is so handicapped by nature that he can never do the work of the white. It is rather to help bring about such conditions and ideals that at least the Negro may realign himself—the future will determine the issue. The author deserves praise for his avoidance of pessimism and his recognition that North and South must unite in constructive programs.

CARL KELSEY.

University of Pennsylvania.

Welsford, J. W. *The Strength of England.* Pp. xviii, 362. Price, $1.75. New York: Longmans, Green & Co., 1910.

This is a sketch of the history of England, or so much of that history as the author lived to complete, written with the idea of bringing out some of the economic features of the story, and especially to prove the desirability of a policy of protection to home industry and trade. Of this kind of writing it is a favorable example. It is the result of much reading, thought, and care in statement. It includes many suggestive explanations and comments. But there is a fundamental difficulty with this whole form of treatment of history. As far as it is work in history it is one-sided, arbitrary and inadequate. Historical consequences have flowed from the whole body of historical conditions not from one particular group of them. So Mr. Welsford has not only left out whole fields of historical occurrences, but has been led into making many entirely improbable and certainly quite unsupported historical assertions, besides a rather large body of minor misstatements.

As far as such a work is an argument for protection as a practical present-day policy, the vast number and variety of occurrences in the life of a nation through many centuries of time, provide an embarrassing abundance of material. By a selection of events and a series of statements and explanations quite as justifiable and sound as those of the author of this book, a free-trader could make a politico-economic history of England that would interpret it in exactly the opposite way and teach free-trade instead of protection. Work must be much more critical, thorough, accurate and profound than such a sketchy outline of a large subject as this before it can have any very serious value.

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